NORTH WEST MEDIATION STRATEGY AND PLAN FOR TOURISM, MINING AND LAND CLAIMS

Volume 1: Situational Analysis
Contour Project Managers CC & Associates

May 2013
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<td>Community Property Association</td>
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<tr>
<td>CSI</td>
<td>Corporate Social Investment</td>
</tr>
<tr>
<td>DEAT</td>
<td>Department Environmental Affairs and Tourism</td>
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<tr>
<td>DLA</td>
<td>Department of Land Affairs</td>
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<tr>
<td>DME</td>
<td>Department of Energy</td>
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<tr>
<td>DMR</td>
<td>Department of Mineral Resources</td>
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<tr>
<td>DWA</td>
<td>Department Water Affairs</td>
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<tr>
<td>EDPs</td>
<td>Environmental Development Plans</td>
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<tr>
<td>EMF</td>
<td>Environmental Management Framework</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>GDPR</td>
<td>Gross Domestic Product region</td>
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<tr>
<td>IDC</td>
<td>Industrial Development Corporation</td>
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<tr>
<td>LCC</td>
<td>Land Claims Commission</td>
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<tr>
<td>LED</td>
<td>Local Economic Development</td>
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<tr>
<td>LUMS</td>
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<td>No-Government Agency</td>
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<td>Spatial Planning Land Use Management Bill</td>
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1 PROJECT ORIENTATION

1.1.1 Introduction

The NW Planning Commission is a provincial organ of state set by the Premier of the North West Province to provide a futuristic outlook that will assist in the eradication of poverty and contribute to the growth and development of our economy. The Commission appointed Contour Project Managers CC and Associates for the “Provision of technical services towards the production of Strategy and Plan for the management/mediation of relation between tourism, mining and land claims in the province”.

1.1.2 Background

The objective of the Project is circumscribed to the management of different interests manifest in the so-called mining towns of the province, with Bojanala serving only as an apt case to illustrate the point. The following succinctly captures the essence of this initiative:

- 11 December 2007: Sheqafrica.com reports that the North West Parks and Tourism Board (NWPTB) and Heritage Park signed a collaboration agreement with three mining houses doing business north of Pilanesberg National Park and the town of Moruleng. This was a sequel to concerns that mining activities took place with little concerns for conservation and air pollution. Another concern was that miners embarked on such activities on land that could be used for tourism and conservation;
- 30 January 2011: Business Report reports that the community of Utivalgrond, near Brits, wants Roman Abramovich’s Vamento Alloys to increase on its shareholding in mining operations undertaken on their land; and
- 8 September 2011: SABC reports that the North West (NW) Community of Chaneng accused mining houses operating their land of not undertaking development programmes within their areas. The protest turned violent, leading to the intervention by the NW provincial government. The report also recalled that recently, the Bapo Ba Mogale Community embarked on violent protest against Lonmin for failing in its Corporate Social Investment (CSI) responsibilities and not employing locals.

There are many instances of these occurrences across the country. The point meant with these examples is for their illustrative purposes.

1.1.3 Problem Statement

In large measure, the North West province is characterized by significant mining developments and prospects, tourism potential and bevy of land claims. Overtly, these distinctive interests possess the possibility to diminish each other and the economic growth and development of the province. Regrettably, there is currently a strategic hiatus as to how the provincial government intends to address the conflicting interest between these sectors on a sustainable basis.

1.1.4 Project Objectives

The primary project objectives are:
- To unlock development potential
- To alleviate poverty
- To resolve conflict between competing sectors and land claims
- To capacitate host communities and land claimants to take advantage of opportunities.

The secondary objectives are:
- Creating harmonious coexistence between the sectors;
Creating a platform for dialogue among parties;
Ensuring stability in the province’s mining areas;
Providing a conducive environment for investment promotion;
Securing the buy-in of all strategic partners;
Finding complementarities between the sectors;
Ascribing responsibilities between role-players;
Generating agreeable dispute resolution mechanisms between sectors; and
Proposing a monitoring and evaluation mechanism that enhances development in the province.

2 NATURE OF THE CHALLENGE

2.1 TOURISM

As in the rest of South Africa, land is a precious commodity in North West Province. Many areas in the North West Province, especially the northern and eastern regions, are well endowed with spectacular natural areas and precious cultural heritage sites. Most of these natural and heritage attractions are in close proximity to Gauteng, which is not only the largest domestic tourism market in South Africa, but is also the greatest international gateway into Africa and South Africa. This makes particularly the eastern part of the North West Province the area in South Africa with the greatest untapped ecotourism potential.

The ecotourism icons of North West Province are Pilanesberg National Park and Madikwe Game Reserve. Both are developed to their full capacity and the need for additional ecotourism land that can satisfy the tourism demand is acute. Pilanesberg and Madikwe have both proven the substantial contribution of nature-based tourism projects in rural settings towards job creation and an improved quality of life for local communities. The Heritage Park project linking Pilanesberg with Madikwe is an attempt towards converting underutilised and reasonably undisturbed land into an area that can capitalise on the models presented by Pilanesberg and Madikwe for the benefit of the people of the region.

The substantial pressures from urbanisation, mining and industrialisation on the Magaliesberg Mountain, its rich biodiversity, archaeology, cultural history and its attraction as an eco-tourism and leisure retreat for mainly Gauteng residents, has been long realised by government. An application for listing the Magaliesberg Mountain range and its surrounding environment as a Biosphere Reserve with United Nations Environmental, Social and Cultural Organisation (UNESCO) has been submitted in an effort to better manage and balance conservation and development in the Magaliesberg region. This demonstrates government’s understanding of the pressures of development as well as its intention to protect, but simultaneously optimise the sustainable utilisation of its natural and cultural assets.

Other similar areas of importance exist throughout the North West Province, including the UNESCO listed Vredefort Dome and Cradle of Humankind World Heritage Sites and areas further afield identified by the NWPTB through their Protected Area Expansion Strategy; such as at Taung, Vaalkopdam and Molopo.

2.2 MINING

Mining is a substantial contributor towards economic growth and development in the Province. In certain areas however, the natural resources upon which the aforementioned ecotourism industry is to be built, also houses some of the richest mineral wealth on the continent.

The Merensky Reef, (named after the geologist who discovered it), was discovered in the early 1920’s and mining of platinum, chrome and other minerals expanded in the 1960’s with
investment from large mining companies, such as Impala and Anglo Platinum. The Rustenburg region is now the largest producer of platinum in the world. The land on which this mineral wealth is located is owned, amongst others, by the Baphokeng. The negotiation of prospecting and mining rights initially resulted in a modest income for the tribe increasing in the 1990’s when the tribe contested their rights to obtain greater benefits in the form of a royalty as well as shareholding in the mining company. This created a precedent for future deals between the tribes and the mining companies and tribes have moved from receiving royalties to investing in mining companies, becoming corporate players and accumulating significant wealth as a “traditional” community. This has led to the general acceptance of the tribal entity as the “owner” of the land as they have the legal responsibility and historical and traditional rights of families, clans, and villages within these areas can be ignored (see Annexure A). Contests over historical vs legal ownership of land often delay development.

The mining sector is a significant contributor to the South African economy. The National Planning Commission’s National Development Plan 2030 (NDP), notes that the mining industry has performed poorly shrinking by one per cent per year over the past 10 years “when the world’s top 20 mineral exporters achieved an average annual growth of 5 per cent” (Leon, 2012). The NDP suggests that the mining sector could grow if it could overcome constraints such as uncertainty in the regulatory framework and property rights and states that the potential growth relies on the platinum group metals. The NDP recognises the need to stimulate mining investment and production and the need for certainty in the mineral regulatory regime.

The platinum sector that dominates the Rustenburg area is experiencing rising costs and low prices with labour issues exacerbating the situation. Leon (2012), in his address, urged “government and industry to recognise the need for a "new deal" for South Africa’s mine workers and mine communities, because without it - without strengthening the social licence to operate - we would not have a sufficiently firm foundation for equitable and sustainable growth in the mining sector” (Leon, 2012).

2.3 TOURISM AND MINING

In a number of the most important tourism areas in the North West Province, current and future tourism operations are directly affected by mining activities. As examples, Pilanesberg National Park, the Heritage Park conservation and tourism corridor linking it with Madikwe Game Reserve; and the Magaliesberg Mountain Range, for which listing with UNESCO as a Biosphere Reserve has been submitted; are seriously threatened by expanding mining activities.

According to UNESCO’s Man and the Biosphere Programme (MaB), Biosphere Reserves fulfil both conservation and development functions. Therefore, resource use is encouraged, provided that it is done in an environmentally sustainable manner. Some of the mines that are active along the northern foothills of the Magaliesberg have accordingly endorsed the application to UNESCO by the Province for having the Magaliesberg recognised as a Biosphere Reserve. These mines have the potential to play a major role in funding environmental awareness, research, training and job creation programmes through their social labour plans.

Both the Pilanesberg and Magaliesberg examples set an important basis upon which further collaboration and mediation between mining and tourism can be built.
2.4 LAND CLAIMS, TOURISM AND MINING

In a number of areas within the province, land claims have been registered on land that has been previously developed or have potential for tourism and/or mining. In a number of instances, agreements have already been reached between claimants on the one hand and current land management agencies (such as the NWPTB) and/or mining companies on the other. In many other instances, agreements have not yet been reached or negotiations are still in progress. Sadly, in some cases where agreements have been reached, implementation of these agreements has not been successful and has the potential to become counter-productive in achieving mutually beneficial agreements in future.

The land restitution models available to land claimants are mostly based on an agricultural land use model. Where land allocated to claimants has greater tourism and/or mining potential, land claimants do not always have the same level of access to technical and financial support necessary to utilise such alternative land use options.

With the progress made on a number of fronts, as mentioned above, the opportunity exists to capitalise on these proven models and successes to develop a unique and “home-grown” strategy and plan for the Province, that can be used as a basis for managing relations between tourism, mining and land claims and for mediating between different interest groups for the overall benefit and well-being of the Province and its people.

Of particular relevance to this assignment is the fact that although there is diversity in the potential land use options (tourism, mining, etc) for much of the land in the Province, some models have already been developed and by interrogating their successes and failures, it will be possible to develop a workable strategy and plan for the Province, so that: i) land is managed to utilise and optimise its best short-term and long-term potentials; ii) land claimants can access the necessary support to participate in the best possible land use options available to them; and iii) any conflicts between different interest groups (tourism, mining and land claims) can be mediated to achieve such optimisation.

The most important challenges lie in the large tracts of attractive natural areas of the Province where mineral wealth threatens its long-term tourism use, unless mining is done in such a way that the long-term tourism potential is not lost. Furthermore, claimants that have been allocated land where mining and/or tourism are the best form of land use, should be able to meaningfully participate and benefit from the best land use options available to them. This can only be achieved if an appropriate strategy and plan is available to assist the Province in achieving these objectives.
3 PROJECT METHODOLOGY

The project comprised the following phases:

1.1 ASSESSMENT PHASE

The assessment phase comprised documentary reviews, best practice analysis and consultation with government and other key stakeholders in the respective sectors.

1.2 STATUS QUO AND OPTIONS PHASE

The Status Quo and Options Phase, the results of which are briefly summarised in this report, determined the potential for a Management / Mediation Strategy and Plan through a situational analysis and a strategising exercise. Specific strategic recommendations, with an interim implementation framework and an organalysis that reflected possible roles and responsibilities were developed.

The purpose of the Status Quo and Options Report was to provide the most relevant findings and preliminary solutions. The report was circulated to key stakeholders to prepare for a consultative workshop.

1.3 STAKEHOLDER CONSULTATIVE WORKSHOP

At the consultative workshop held on 24th and 25th April, the findings and preliminary recommendations were interrogated and agreement was reached on the most appropriate strategy and plan that should be adopted, as well as potential implementation roles and responsibilities of different role players. This activity also obtained buy-in from key stakeholders for the proposed strategy and plan and its implementation.

1.4 FINALISATION OF MANAGEMENT / MEDIATION PLAN AND STRATEGY

Based on the options and recommendations discussed and agreed upon at the workshop, the final strategy and plan was developed for managing and mediating between Tourism, Mining and Land Claims, specifying the actions that should be followed.
4 GEOGRAPHIC FOCUS

The geographic focus of this study was on the areas where the highest mining and tourism potential exist in the Province and where land claims overlap with these areas. This does not exclude the opportunity for rolling out the same or similar strategies and plans to other areas with similar challenges.

4.1 TOURISM FOCUS AREAS

The tourism focus areas are based on the areas identified as the priority areas for tourism in the North West Province during the national government’s “Review in Support of International and Domestic Tourism Report” (1999), the development of the “North West Tourism Master Plan” (2001), the North West Parks and Tourism Board’s “Priority Areas For Combined Conservation and Socio-Economic Development Project” (2004).

These areas comprise the following primary tourism destination of the North West Province and are reflected in Map 1 below:

- The primary tourism Gauteng to Madikwe tourism corridor including the proposed Magaliesberg Biosphere, the Cradle of Human Kind World Heritage Site, Rustenburg, Pilanesberg/Sun City, Vaalkop Dam, the Heritage Park and Madikwe Game Reserve.
- The tourism cluster of Vredefort Dome and Potchefstroom.
- The Marico tourism cluster.
- The Taung tourism cluster.

4.2 PRIMARY MINERAL DEPOSITS IN NORTH WEST

The North West Province is the largest producer of platinum group metals in South Africa, accounting for some 64.7% of the nation’s total output. Mining contributes 36.6% of gross domestic product by region (GDPR) and 21.6% of provincial employment. The major mining activities in the Provinces are:

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<tr>
<td>Chrome</td>
<td>Slate</td>
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<td>Nickel and Cobalt</td>
<td>Dolomite</td>
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<td>Manganese</td>
<td>Gravel and Aggregates</td>
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<tr>
<td>Vanadium</td>
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<td>Lead and Zinc</td>
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<td>Fluorspar</td>
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A detailed description and the location of the aforementioned minerals are provided in Appendix B attached. A simplified spatial overview of the primary mining areas (extracted from the above) is provided in Map 2 below:

4.3 LAND CLAIMS ON MINING AND TOURISM FOCUS AREAS

Land claims occur throughout the North West province. In an effort to focus the study, the areas in which there are land claims that may overlap with primary tourism and/or mining areas described above are reflected in Map 3 below.

4.4 GEOGRAPHIC FOCUS OF THIS STUDY
The focus for our study as depicted in **Map 4** below was derived from overlaying priority geographic focus areas for tourism (Map 1), minerals (Map 2) and potentially conflicting land claim areas (Map 3) with each other. Although it is recognised that these are not the only areas where conflict between the sectors are experienced, the study focussed on these areas for purposes of identifying representative issues and seeking possible solutions that could be applied throughout the province.
Map 1: Primary Tourism Areas in North West Province
Map 2: Primary Mining Areas in North West Province
Map 3: Areas in North West Province where Land Claims overlap with Primary Tourism and Mining Areas
Map 4: Primary Conflict Areas Between Tourism, Mining and Land Claims in North West Province
5 LEGISLATIVE CONTEXT

5.1 GENERAL

The following general legislation and policies are relevant to the study, as it deals with land development and land use and with guidelines for tourism, mining and land restitution:

- The Constitution of SA, S25 –Property & Restoration of Land Rights
- Companies Act 71 of 2008
- Physical Planning Act 25 of 1991
- Development Facilitation Act 67 of 1995
- Interim Protection of Informal Land Rights Act
- National Framework For Sustainable Development
- National Environmental Management Act 107 of 1998
- Environment Conservation Act 73 of 1989
- Environmental Conservation Act – Regulations Regarding Noise, Vibration And Shock
- Mineral And Petroleum Resources Development Act, 28 of 2002
- The Mining Charter
- Biodiversity Stewardship
- North West Land Administration Act
- Spatial Planning And Land Use Management Bill

These are briefly reviewed in Appendix C in terms of their relevance to this study.

5.2 TOURISM

The following tourism related legislation and policies are relevant to the study:

- National Environmental Management: Protected Areas Act 57 of 2003
- North West Parks Board Act, Act 3 of 1997
- Transvaal Nature Conservation Ordinance 12 of 1983

These are briefly reviewed in Appendix C in terms of their relevance to this study.

5.3 MINING

The following mining related legislation is relevant to the study:

- Mineral & Petroleum Resources Development Act, 2004

This legislation is also briefly reviewed in Appendix C in terms of its relevance to this study.

5.4 LAND CLAIMS

The following Land Claim related legislation is relevant to the study:

- Land Claims Act
- Communal Property Associations Act (CPA)

These are briefly reviewed in Appendix C in terms of their relevance to this study.
5.5 INSTITUTIONAL STRUCTURES

5.5.1 TOURISM AT THE NATIONAL LEVEL

At both the national and the provincial level, tourism is guided by the South African Tourism Policy (1996). At provincial level, the North West Province is guided by the North West Tourism Master Plan (2001).

Tourism at the national level is a competency of the Minister in the Department of Tourism (see diagram below).
Figure 1: South African Department of Tourism

Tourism

Department of Tourism

Chief Operations Officer
- Coordination and Administration
  - Governance Support
  - Business Performance and Risk Management
  - Communications
  - Financial Management
  - Corporate Affairs
  - HR
  - Facilities and Legal

Domestic Tourism
- Chief Director: Southern Region
  - Western Cape, Northern Cape, Eastern Cape and Free State
- Chief Director: Northern Region
  - Gauteng, North West, Limpopo, KwaZulu-Natal, Mpumalanga

International Tourism
- Chief Director: Americas and the Caribbean
- Chief Director: Asia and Australasia
- Chief Director: Central and East Asia
- Chief Director: Multilateral and Regional Organisations
- Chief Director: Europe

Policy and Knowledge Services
- Policy and knowledge services
- Integrated Policy and Sector Planning
- Intergovernmental Coordination and Stakeholder Management
- Monitoring and Evaluation
- Research, Information & Knowledge Management

Minister
Deputy Minister
Director General

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5.5.2 TOURISM AT THE PROVINCIAL LEVEL

Within the North West Province, tourism is a function of the Department of Economic Development, Environment and Tourism (see diagram below). The department is mandated to steer provincial economic growth activities and ensure the preservation of the environment, in order to speed up economic growth and transform the economy to create decent work and sustainable livelihoods in the province.
Figure 2: North West Provincial Government and Tourism

North West Provincial Government

Office of the Premier
- Health
- Sports, Arts and Culture
- Human Settlement, Public Safety and Liaison
- Economic Development, Environment, Conservation and Tourism
- Finance
- Education
- Local Government and Traditional Affairs
- Public Works, Roads and Transport
- Social Development, Women, Children and People with Disabilities
- Agriculture and Rural Development

Mandates in Economic Development, Environment, Conservation and Tourism
- Leading the North West Provincial Growth and Development Strategy (2004-2014), with reference to:
  - North West Spatial Development Initiatives Strategy
  - The National Spatial Development Perspectives (NSDP)
  - Small Business Act, 1995 (currently under review)
  - Provincial SMME strategy
  - Rural Development Strategy including Integrated Sustainable Rural Development Strategy
  - National Industrial Policy Framework
  - Cooperatives Development Bill
  - White Paper on Tourism Development, 1996
  - Tourism Second Amendment Act, No. 70, 2000
  - Tourism Act, No. 72 of 1993
- Environmental Application and Decisions
- Promotion of Economic Development
- Tourism within the North West (along with the North West Parks and Tourism)

North West Parks and Tourism

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The following support agencies in the North West Province also play a role in the development of tourism:

**Figure 3: Other North West Provincial Institutions**

**North West Province: Other Provincial Institutions**

**Purpose:**
- Position the North West Province as the preferred destination for trade and investment
- Facilitate trade and investment opportunities

**Purpose:**
- Obtain commitment of the NW province for wildlife conservation
- Develop and manage protected areas
- Facilitate development of wildlife-related industries
- Develop and market tourism

- **Invest North West**
  - Providing information

- **North West Parks and Tourism**
  - Parks and Tourism Development, Management and Marketing Agency

- **North West Development Corporation**
  - Economic Development Agency
5.5.3 MINING

The Department of Mineral Resources has four divisions – Mineral Policy and Promotion, Mineral Regulation, Mine Health and Safety Inspectorate and Corporate Services. It also has responsibility for a number of state owned enterprises, such as Mintek, Council for Geoscience and Metals Regulator (see Figure 4).

At a regional level the DMR is represented in four regions (Northern, Central, Western, Coastal) by the Chief Directorate, Mineral Regulation and Administration (CDMRA). The objective of the CDMRA is to administer the legislation, promote mineral development, address past legacies and coordinate with other government structures (see Figure 5).

The DMR is not represented at local government level.
Figure 4: Department of Mineral Resources

DMR

State-owned Enterprises

MINTEK
Council for Geoscience
State Diamond Trader
SA Diamonds and Precious Metals Regulator

Mineral Policy and Promotion

Mineral Regulation

Mine Health and Safety Inspectorate

Corporate services

Minister
Deputy Minister
Director General

Including Mine Environmental Policy and Research

Providing policy inputs, establishment and application of mine health standards and inspection
Figure 5: Regional Offices of the Department of Mineral Resources

Mineral regulation: responsible for overseeing the activities performed by the Directorate Licensing and Legal Compliance in the three regional offices.

Mineral Regulation functions comprise:
- Regulatory
- Promotion
- Policy Formulation

The functions of the Mineral Regulation branch are to:
- Administer the MPRDA and other applicable legislation to ensure the granting of prospecting and mining rights in terms of the Act
- Promote mineral development including urban renewal, rural development and black economic empowerment
- Address past legacies with regard to derelict and ownerless mines and enforce legislation regarding mine rehabilitation by means of regulated environmental management plans
- Co-ordinate and liaise with national, provincial and local government structures for efficient governance

Chief Directorate Mineral Regulation and Administration (CDMRA): Northern Regions
- Limpopo, Moulamanga Regional Offices

CDMRA: Central Regions
- Free State, Northern Cape Regional Offices

CDMRA: Western Regions
- North West, Gauteng Regional Offices

CDMRA: Coastal Regions
- Eastern Cape, Western Cape, KZN Regional Offices
- Mineral and Petroleum Titles
5.5.4 **LAND CLAIMS**

The structure related to Land Claims can briefly be explained as follows:

This following structure is in accordance with the Restitution of Land Claims Act for the commissioners and the organisational structure developed by the Commission and the department to support the Commissioners with their work in terms of Land Claims:

- Chief Land Claims Commissioner
- Deputy Chief Land Claims Commissioner
- Regional Land Claims Commissioner
- Chief Director of Land Restitution
- Director Operations for the various provinces as per the structure of the Commission
- Director Quality control for the various provinces as per the structure of the Commission
- Regional Managers
- District Managers
- Project officers.
Figure 6: Department of Rural Development and Land Reform
6 GOALS, STRATEGIES AND POLICIES

6.1 GENERAL POLICIES

The following general policies are relevant to the study:

- King Report
- National Growth Path
- National Development Plan—Vision 2030 (NDP 2030)
- North West Growth & Development Strategy
- North West Spatial Development Framework (SDF)
- Local Government Municipal Structures Act

These are briefly reviewed in Appendix D in terms of their relevance to this study.

6.2 TOURISM

The following tourism policies are relevant to the study:

- DEAT, Infrastructure Review In Support Of International And Domestic Tourism, May 2009
- White Paper On The Development And Promotion Of Tourism (DEAT, May 1996)

These are briefly reviewed in Appendix D in terms of their relevance to this study.

6.3 MINING

The Mining Charter previously mentioned is relevant to the study. It was developed to redress the historic inequalities from the systematic marginalisation of the majority of South Africans. It establishes targets in specific areas with penalties for non-compliance.

6.4 LAND CLAIMS

The following Land Claims policies are relevant to the study:

- MOU Between Land Affairs and Department of Tourism
- National Co-Management Framework

These are briefly reviewed in Appendix D in terms of their relevance to this study.
7 DESKTOP LITERATURE

Documents directly related to economic development and land that affect the three sectors were collected and reviewed where available. The national and provincial growth strategies as well as strategies, plans, policies and protocols affecting the specific sectors are listed below. A short review of the most salient points contained in these documents that are relevant to this project is included in Section 10.

7.1 OVERARCHING DOCUMENTS REVIEWED

The following documents regarded as important to all three sectors (tourism, mining and land claims) have been available for review:

- National Growth Path, 2009
- Resolutions from People and Parks Conferences
- DEA, People and parks conference, conference report, Beaufort-West, 2006
- DEA, 3rd People and Parks Conference, Proceedings report, Mafikeng, 2008
- North West Parks and Tourism Board, Memorandum of the 4th bi-annual National People and Parks Conference, 2010
- DEAT, People and Parks Workshop, Draft Workshop Report, 2004
- North West Spatial Development Frameworks (SDF)
- Spatial Planning Land Use Management Bill (SPLUMB).

7.2 TOURISM DOCUMENTS REVIEWED

The following documents have been reviewed to obtain an understanding of the current situation and to derive some “lessons learnt” from relevant case studies:

- Memorandum of understanding: Cooperation and collaboration on the proposed establishment of the Heritage Park area and related activities (integrating mining, conservation and tourism)
- Co-management agreement between North West Parks and Tourism Board and the Barokologadi Communal Property Association (CPA) for the Madikwe Game Reserve
- National and Provincial Policies and Strategies:
  - National Protected Area Expansion Strategy
  - North West Tourism Master Plan
- Protected Areas and Community-Based Tourism Development Initiatives:
  - Pilanesberg National Park Management Series, Pilanesberg National Park Management plan, 2ed, 2000
  - Heritage Park Development Concept
  - Heritage Park Expansion Plan: Pilanesberg National Park
  - Greater Vaalkop Dam Development Concept

7.3 MINING DOCUMENTS REVIEWED

The following documents were reviewed:

- IDC, Pallinghurst and Bakgatla Form a Strategic Partnership to create a major new PGM produces through consolidation and a R3.24 billion IDC investment. Media Release- Thursday, 29 March 2012.
• Andrew Mason – Mining and Local Black Communities in the North-West Province, South Africa, c. 1995-2010. Contestations over land, power and assets.
• M.A.I. De Koning – Analysis of a Model Designed for Land Restitution in Protected Areas in South Africa. Doctoral Thesis in Development Studies for the University of South Africa. October 2010.

7.4 LAND CLAIM DOCUMENTS REVIEWED

The following documents related to Land Reform and Restitution were reviewed:
• Restitution of Land Rights Act Act 22 of 1994
• Restitution of Land Rights Act Act 22 of 1994 (Rules)
• Agreement between DLA and DEAT
• Cabinet Memorandum Re: Land Claims in Conservation Areas
• National Co-management Settlement Framework
• Co-management options
• Co-management in protected areas article (2008)
• South African Land Policy.
8 AGREEMENTS BETWEEN PARTIES – SUCCESSES AND LESSONS LEARNT

The following agreements that currently exist between relevant stakeholders were analysed to understand appropriate context, to determine lessons learnt and with the expectation to identify potential best practice.

The following national agreement relating to the study were analysed:

- National Departments MOU between Department of Land Affairs and Department of Tourism

The following provincial agreements relating to the study were analysed:

- Makuleke co-management Agreement between SANPARKS, DEAT, Department of Land Affairs, CPA & the Community
- Barokologadi/Madikwe co-management Agreement between NWPTB, DEAT, Department of Land Affairs and CPA
- MOU Heritage Park between the mines and the Communities

The following Municipal agreements relating to the study were analysed:

- Joint Management MOU between Bafokeng and Rustenburg LM for services.
- There are also informal and ad hoc agreements at this level between sectors that are either not functioning and are not coordinated.

The following local agreements relating to the study were analysed:

- Communities with mines – ad hoc not supported by government, case by case, uncoordinated, forums that meet to resolve issues and disputes, these forums do not exist anymore due to the fact that no-one was driving them.
- Bakgatla & NWPTB, meet between parks manager and claimant community
- Bakgatla development forum
- Pilanesberg and Madikwe Co management Forums
- Heritage Park Steering Committee
- Lonmin & Bapomamogale community
- Bafokeng & Impala Platinum
- Palling Hurst – IDC & Mining
- Coal of Africa & Pafuri Makoleke
- Assore and Bathlalerwa Community
- Bakgatla ba ga kgafela and anglo platinum
- Bakubung ba Mmongotle and Wesizwe Platininum
- Royal Bafokeng National vs. Minister of Land Affairs
9 STAKEHOLDER CONSULTATIONS

9.1 STAKEHOLDERS CONSULTED IN THE TOURISM SECTOR
The following stakeholders were consulted in the tourism sector:

- Manager: Pilanesberg National Park
- Manager: Madikwe Game Reserve
- CEO: North West Parks and Tourism Board
- Manager: Park Expansion and Development, North West Parks and Tourism Board
- People & Parks Manager: North West Parks and Tourism Board
- Director Tourism: NW Department Economic Development, Environment and Tourism
- LED Director: Bojanala District Municipality
- Manager Local Economic Development: Rustenburg Municipality
- Landowner and Member: Vaalkopdam Expansion Area
- Madikwe Lodge Owners Forum.

The following participated during a two-day workshop:
- Construction Industry Development Board
- North West University
- North West Parks and Tourism Board
- Urban-Econ
- WESSA

9.2 STAKEHOLDERS CONSULTED FROM THE MINING SECTOR
The following stakeholders in the mining sector were interviewed:

- Corporate Sustainability Team: Anglo Platinum
- Technical Manager: Platmin
- Technical Director: Assore
- Director: Synergy
- Director: Mphahlele Wessels & Associates.

The following participated during a two-day workshop:
- Mampa Investment Holdings
- Anglo Ashanti
- Anglo American
- Rustenburg Platinum
- Impala Platinum
- IFMSA
- Chamber of Mines
- Chrometco

9.3 STAKEHOLDERS CONSULTED FROM THE LAND CLAIMS SECTOR
The following stakeholders were consulted on land claims:

- Bapo Ba Mogale Tribal Council
- Director Operations: NW Land Claims Commission
- Bojanala District Manager: Rural Development
- Director Development: Bakgatla
- Dept Rural Development and Land Reform
- Bapo Ba Mogale Tribal Council Member
- Chief Director Land Reform Mahikeng
- District Managers: Land Reform
- Project Coordinators: Land Reform and Agriculture.
The following participated during a two-day workshop:
- Bakgatla Ba Kgafela Tribal Authority
- Bakubung-Ba-Ratmeo
- Bakwena-Ba-Moojopa
- Baptring

### 9.4 OTHER STAKEHOLDERS CONSULTED FROM GOVERNMENT

The following government departments participated during the workshop of 24 and 25 April 2013:

- National and Provincial Government
  - Department of Local Government
  - Department of Rural Development and Land Reform
  - Invest North West
  - Department of Economic Development, Environment, Conservation and Tourism

- Local Government
  - Greater Taung Local Municipality
  - Rustenburg Local Municipality
  - Kgetleng River Local Municipality
  - Madibeng Local Municipality
  - Ramotshere Moiloa Local Municipality
  - Ventersdorp Local Municipality
  - City of Malotsana
10 KEY ISSUES RAISED

Key issues raised during the review and consultative processes were identified and recorded. These issues are not necessarily the opinion of the consultants nor the Planning Commission but attempts to be a fair reflection of the opinions raised in documents and by the persons and institutions interviewed or participating in workshop sessions.

Issues raised were classified between “Highly Important Issues Raised” and “Other Important Issues Raised”, to assist in focussing the strategy and plan on the most important issues without losing sight of others:

10.1 PRIORITY ISSUES RAISED

The following priority issues were raised:

- Lack of integrated strategizing and planning to unlock full potentials
- Spatial planning not adequately considerate of best land use
- Confusion and conflicts regarding rights
- Short term gain vs. long term sustainability
- Loss of opportunities from lengthy and delayed processes
- Non-fulfilment of roles and responsibilities by key role players
- Enforcement of Legislation
- Overriding decision making power.

10.1.1 LACK OF INTEGRATED STRATEGIZING AND PLANNING TO UNLOCK FULL POTENTIALS

The planning processes require national and provincial oversight to ensure that national and provincial priorities are adequately integrated vertically.

Certain government departments are known to compete for the same land for different uses, such as between tourism and agriculture or between development and conservation. Stakeholders have also complained that government departments as well as neighbouring provinces and municipalities work in silos and therefore do not have strategies and land use plans that are integrated horizontally between sectors or neighbouring provinces and municipalities. Examples of such non-cooperation within government exist in the Heritage Park corridor (between Pilanesberg and Madikwe) and in the proposed Magaliesberg Biosphere area.

There are too many plans that are not adequately integrated or speaking to each other. Adequate land use management instruments are in place, such as Land Use Management (LUM) Plans, SDFs, Environmental Management Frameworks (EMFs) and Strategic Environmental Assessments (SEAs). These plans all have certain development priorities and these priorities should be fully aligned with one another.

The mentioned planning instruments are however not used effectively and stakeholder participation is not satisfactory. All stakeholders from all sectors (also specifically those from potentially competing or opposing sectors) should proactively be brought on board to participate in all strategic land use planning processes from the outset and should not only be consulted once a plan is on the table. For example, when doing a tourism plan, involve the mines, the claimants and other sectors, and vice versa.
10.1.2 SPATIAL PLANNING NOT ADEQUATELY CONSIDERATE OF BEST LAND USE

Current spatial land use plans are often developed sectorally and therefore ignore competing land uses and how to deal with it. It also lacks an overall provincial perspective that identifies the areas of key potential for each of the primary sectors (agriculture, mining, tourism, etc) and the potential overlap, competition or conflict between the sectors. Therefore, most land use strategies or plans do not adequately address competing land use and clearly reserves land for a specific future priority land use. The Spatial Planning Land Use Management Bill (SPLUMB) and the North West Land Use Management Bill (NWLUMB) should be used as a guideline for strategic planning and inputs obtained from this process could still be incorporated.

Land use planning should be a pro-active and not a re-active process. All sectors should be allowed to participate in land use planning to ensure that all land use options are fairly and equally considered. This should not be restricted to government and the private sector, but should include communities and Non-government Organisations (NGOs). It is recommended that areas with high potential for a specific primary land use or sector should be reserved for such future use. The effects that the movement of political boundaries have on land use are severe and not always adequately appreciated by decision makers.

It was also recommended that government should offer a service to land owners and industry to direct them towards and facilitating optimum land use. Government’s role in ensuring optimum land use should not be restricted to the priority areas but throughout the province.

Areas which are expected to have competition between different land use priorities should be proactively identified and mediation and mitigating guidelines should be provided. Any intended land use that is in conflict with the primary land use in a predetermined area, should also be very carefully interrogated before it is approved, so that the primary land use is not negatively affected.

The importance of water for the agriculture, mining and tourism sectors and the relationship between these sectors in relation to water are not always understood and adequately appreciated. This emphasises the need for integrated planning where cumulative effects could be considered before land use rights are granted. Other resources, including infrastructure, should also be divided fairly and equitably between sectors.

An interesting question was posed: Why does government control land use for land claimants and not for private land owners? Concern was also raised regarding large tracts of underutilised land being under single ownership.

10.1.2.1 Mining

Mining has the potential to degrade areas and make great demands on water resources and infrastructure and can lead to overpopulation and social disruption if not well planned and managed.

Diversification of the economy during and after mining should be pro-actively pursued during the life of the mine, to avoid sterilisation of current and future opportunities. Mines usually delay rehabilitation and also do not always have a specific usage in mind during such rehabilitation. This restricts alternative usage during and after mining.
10.1.3 CONFUSION AND CONFLICTS REGARDING RIGHTS

Confusion and conflict exists between different types of rights, such as mineral rights, surface right, traditional rights and other peripheral rights. Allowing the contestation of land use by stakeholders that do not have rights in terms of the law to make decisions on land implies that other rights are being infringed. The identification and differentiation of the separate rights are not always fully understood, clearly defined in law or recognised during the processes of negotiations. Therefore the resolution of disputes and basis for compensation for the use or loss of rights become confusing and a challenge. A definition of the different types of rights and better guidance on a process to deal with these different types of rights need to be developed. Obsolete legislation should be amended or abolished.

10.1.3.1 Claimants and Communities

The body/representative stakeholder that is the ultimate decision-maker as to the use of land is at times difficult to identify, even when the legal entity is defined. Community perceptions regarding land tenure and ownership rights often differ from legal positions. Disputing claimants use various means to block others taking a decision and so the influence on decision making continually changes. Clarity is also needed regarding collective land claims/ownership versus individual land claims/ownership.

Clearly defined roles regarding land use is necessary on land under traditional leadership as community participation is necessary. Decisions should not be made by the tribal authority alone.

10.1.3.2 Mining

In the process the powers and positions of communal and traditional leaders are challenged. The mining company is put in a position where it is asked to choose who they believe is the recognised decision maker. This is impossible to do without clear guidance from the DMR and Land Affairs. Even when the DMR is willing to make a decision based on the legal rights and following a set procedure of consultation, it often delays the decision when individuals or groups object with the ultimate protest being the refusal to engage at all. This leaves the mining company with no guidance on how to achieve resolution.

Especially mining rights and the associated land rights need to be tightened up, clearly defined and understood by all stakeholders to avoid unnecessary confusion, misunderstanding and deadlocks in communication and during negotiations.

A mining licence does not give authority to change land use on the surface. The mines however often neglect to apply for a “change in land use” through the surface right holders as required for the activities on the surface.

A workable model needs to be developed for the passing of compensation and the sharing of benefits by claimants, communities and tribal authorities from mining activities on their land.

There is a negative sentiment amongst communities regarding the granting of mineral rights to foreigners.

10.1.4 SHORT TERM GAIN VS. LONG TERM SUSTAINABILITY

10.1.4.1 Tourism

In many instances, mining has a relatively short life span compared to that of tourism. Where the short-term benefits of mining outweighs that of tourism, even in a primary tourism area, it
may therefore be sensible to allow mining in the short-term over a predefined period, provided the impact is adequately mitigated during operations; and mining rehabilitation programmes from the outset aim to return the land in such a state that tourism can be introduced after mine closure.

Collaboration has been achieved along these lines between the NWPTB and some of the mines operating north of Pilanesberg through entering into Memorandums of Understanding. The management of these agreements do however require substantial and sustainable capacity and effort to ensure that the agreements are diligently implemented. This initiative is seen as a model that can be pursued elsewhere and can be improved upon.

### 10.1.4.2 Mining

Due to the immediate focus on gaining access to the land, mining companies, DMR and stakeholders there is limited consideration of the vision after mining in the discussions and agreements with the land owner. A long term plan is embedded in the official Environmental Management Plan (EMP) for the proposed development but does not appear to be negotiated as the long term benefit for the stakeholders once mining has ceased. A longer term view could assist in developing sustainable benefits for the owners of the land. In some cases the mining companies are clear on their long term land use after closure but the resolution of land issues tend to limit the progress of this vision. The approach taken for the development of the Heritage Park where landowners sign a land management agreement clearly focusses the land user on a long term goal and is a good example of keeping the ultimate land use in mind whilst mining.

Diversification during mining life is however also important to maximise production and benefits from the land. It is also important that mining beneficiation strategies are in place to maximise economic linkages and benefits to local communities and to reduce economic leakages.

### 10.1.5 LOSS OF OPPORTUNITIES FROM LENGTHY AND DELAYED PROCESSES

Participants in the workshop called for government to develop “smart tape” instead of creating more and more “red tape”. Most processes for establishing tourism or mining enterprises and for finalising land restitutions are cumbersome and frustrating and hinders the development of new businesses that are so desperately needed for growing the economy and job opportunities. Red tape and lengthy and unclear processes constricts opportunities and causes investors to walk away.

Processes for utilising land for tourism, mining or land restitution are often also delayed by “third party” agencies such as DWA, DMR, Environmental Affairs, Department of Agriculture and LCC. Bribery and corruption are unsavoury consequences of the delays and lengthy processes.

### 10.1.5.1 Tourism

The private sector complained that processes take too long as no clear policies, systems and procedures are in place and that politics and personal agendas often bedevil the chances of making good process. Poor leadership within government and communities and the inability to stick to time schedules and agreed programmes are a big problem.
During consultation with government officials, the lack of guidelines, unrealistic expectations, the lack of resources and communication between different departments all contribute towards delayed finalisation of land claims in the tourism sector.

A topic often raised at the People and Parks conferences held between 2003 and 2010, is the delay in developing tourism projects, the loss of revenue as a result, and the uncertainties and conflicts caused by the large number of long standing land claims for which the signing and/or implementation of co-management agreements between protected area agencies and claimants have been held up. Conservation agencies are also struggling to finalise co-management agreements in the absence of clear guidelines, procedures and resources and as a result of unrealistic expectations from claimants.

Tourism opportunities are often stifled as a result of pending claims not getting to finalisation, causing plans to be cancelled or investment to be withdrawn. The recognised tourism potential on land successfully claimed in Madikwe has not been realised for a number of years as a result of uncompleted co-management agreements.

10.1.5.2 Mining

Disputes between the traditional authorities who have legal rights to the land and individual communities/villages with possible historical rights to the land, has been causing delays in the access to land for mining purposes. The legal right to land is vested in the tribal authority and the historical rights of individual clans or villages are not recognised in the process. Objections to agreements made with tribal leaders leads to lengthy negotiations and the delayed development or expansion of projects and operations – often for a number of years.

As the negotiations to settle land agreements move into months and years to resolve, the development opportunities for mining can reduce. Apart from the possibility of a mineral company losing interest in the mineral resource as the investment becomes less attractive with time and changing market conditions, a delay can result in the company losing its prospecting right altogether due to the “use it or lose it” principle. This has major economic consequences which are negative to the local beneficiaries of the development.

10.1.5.3 Land Claims

Land Claims and the Land Claims Commissions are regularly criticised for slow delivery and long and protracted processes. Why can a central register of all former land ownership not be kept against which land claims can be verified and why is the land audit taking so long? This causes unnecessary delays, anxieties and tensions.

Conflicting claims, undermining of processes and research unfortunately also lead to extensive delays which is often exacerbated by marches and politicising of land claims.

The complexities of the processes, rights basis of claims that need to be proved and verified and the required archival research, as well as consultation with various parties is however often not understood by most parties.

Extensive delays have been experienced in the issuing of title deeds, long after land claims have been settled.

The processes could also be expedited if sufficient capacity and resources were available.
10.1.6 NON-FULFILLMENT OF ROLES AND RESPONSIBILITIES BY KEY ROLE PLAYERS

Although local municipalities have the final say regarding land use, they usually do not have the capacity and resources to pro-actively plan, to set aside land for appropriate use and to monitor and enforce compliance. In areas with nationally and provincially important resources, municipalities do not receive appropriate support from national and provincial government to fulfill these mandates. Similarly, provincial or local land management agencies do not receive technical and financial support commensurate with additional responsibilities delegated to them from higher levels of government. An example is the transfer of land to claimants by national government which places additional financial and technical burdens upon provincial or local government agencies.

There is concern regarding the lack of continuity within provincial and local government. A change in politicians and government officials often lead to a change in priorities as well as a requirement for re-orientation and repeated capacity building.

10.1.6.1 Tourism

Government developed a national legal and policy framework for addressing land restitution which has to be implemented at the regional level. No financial and technical resources are however provided to the agencies that end up having to develop, implement and manage the agreements that flow from such restitution. The unfunded co-management agreements between successful land claimants and the North West Parks and Tourism Board are a case in point. Apart from having to set aside additional resources to negotiate, implement and sustain these resources, these agreements could lead to decreased sources of income for the agency that is dependant thereupon for its financial survival. It is felt that government should fully fulfil its mandate as facilitator to settle agreements between claimants and agencies.

Another problem identified is that government often attempts to play the role of tourism developer and operator; rather than focussing on its primary role as policy maker, facilitator and controller, thereby creating a conducive environment through the provision of streamlined regulatory mechanisms and procedures, incentives and support infrastructure.

10.1.6.2 Mining

Government is also said to not fulfil its mandate to ensure appropriate and optimum land use. As a result, the rightful land- and mineral right holders are not receiving appropriate benefits from the land.

According to the legal process, the DMR is the lead agent to facilitate land access and they have a defined process for this purpose. However, there is no process to mediate the disputes that arise from the different claims on the land and government does not put itself forward as a facilitator to resolve disputes. Government is also not adequately focussing infrastructure investment in areas with high mining potential to attract mining investment.

10.1.6.3 Land Claims

Land Claimants are generally of the view that there is not sufficient support, capacity and financial resources available to support them with their claims research, verification, legal support as well as general capacity building and training of Land Claims Trusts or Communal Property Association Committee members. They argue that this is quite often the cause of delays in finalisation of Claims and the effective management and use of restored properties.
It is further argued that officials of the Regional Land Claims Commissions just don’t have sufficient time and capacity and financial resources to attend to all the claims they are responsible for.

This is also true in terms of post-settlement support. Government does not have the means to support and monitor recipients of claimed land that do not have their own means of ensuring sustainable use and optimum benefits from the land. Specifically technical, financial and infrastructure support is often lacking. Support to claimants need to be sustained over a long period of time as representatives within claimant organisational structures are often replaced.

Mineral rights have to be tightened up and means need to be found for communities to benefit from these rights.

10.1.7 ENFORCEMENT OF LEGISLATION

Existing legislation and policies are not fully enforced and implemented. Although it is recognised that many land use laws, plans and polices are in place, implementation is not properly monitored and enforced. Non-compliance is a major issue and can be laid at the door of government, civil society and the private sector. Although much legislation and many policies and land use planning and management tools are in place, civil society and business are not complying and government departments are not fulfilling their mandate and responsibility to enforce legislation, policies and procedures and to bring plans to fruition. Reasons given are greed on the part of business, lack of awareness and conflicts of interest within communities and incapacity, corruption, ignorance and slackness on the part of government. Monitoring is needed at all these levels (also at strategic level) and should therefore include monitoring of government agencies, civil society and business.

10.1.7.1 Mining

The legal position of the individuals in land agreements around mining is usually understood but the law is not enforced. DME does inspect Social Labour Plans (SLAs) but do not always have the knowledge or capacity to evaluate fair compliance. This undermines the rule of law. It is the right of each person in South Africa to have access to land, especially in situations where the individuals have been previously disadvantaged, and the legal implications of this right need to be clarified so that negotiations can be taken to a conclusion.

In addition, certain regulations seem to be ignored or compromised as mining companies attempt to progress with their development as the land deliberations continue. These include, obtaining access to the land with the full acknowledgement of the legal land owner according to a draft land agreement, and undertaking activities that do not meet the land use designation for that land (i.e. failure to apply for a change of land use). Other examples given are the lack of enforcement of mining rehabilitation programmes, non-adherence to spatial land use plans and environmental law and general non-compliance with operating regulations. Legislation and policies are said to be applied selectively.

10.1.7.2 Land Claims

The legal position in terms of the Restitution of Land Claims Act is generally understood but the capacity to implement the Act and enforce the legislation is often lacking. Farms under claim is thus often still developed, sold or leased without consulting the Land Claims Commissions in terms of the Act – making restoration of such claimed farms later difficult or even impossible. These issues not only lead to tension and severe conflict between claimants and government and or land owners but also to frustration and a sense with claimants that they are ignored and that their plight to receive restoration is not respected.
10.1.8 OVERRIDING DECISION MAKING POWER

Leaders of government and within civil society often drive their own independent and hidden agendas, causing confusion and dissatisfaction amongst stake holders. Combined with the lack of coordination and integration between the plans of different levels of government and also between different departments of government, this causes uncertainty and conflicts amongst communities and with land owners.

Where projects have been identified, they are not always committed to by all stake holders and are also not tightly managed to ensure successful completion. This often leads to a lack of trust in and support for government initiatives within the private sector and amongst civil society.

10.1.8.1 Tourism

The lead agent for tourism at the national level and provincial levels are the relevant departments of Tourism, with the North West Parks and Tourism Board also playing an important role. Land use is however a municipal competency and the tourism agencies at national and provincial level therefore do not necessarily have the final say over land use.

10.1.8.2 Mining

The lead agent for the mining companies is the DMR who has processes to follow to reach an agreement on land use and access. However, the process fails when the agreements are disputed and there is no mechanism for the appointment of an overriding decision maker.

10.2 OTHER IMPORTANT ISSUES RAISED

The following issues that were regarded as very important were raised:

- Inadequate capacities, awareness and understanding
- Lack of institutional frameworks to drive focussed development objectives
- No mediation and conflict resolutions mechanisms
- National legislation forces unfunded mandates down to local levels
- Insufficient monitoring and control mechanisms.

10.2.1 INADEQUATE CAPACITIES, AWARENESS AND UNDERSTANDING

The national government has set national policies and established national laws that direct the land restitution agenda in South Africa. Government agencies at the provincial and local level are however confronted with additional responsibilities and demands with associated demands on skills and resources not required by their historical mandates, without a commensurate increase in their budgets. This has resulted in an inability to properly deal with land restitution and has reduced their efficiencies in terms of their normal competencies.

Constant replacement of decision makers and officials also causes constant breakdown in continuity and knowledge base. This has a crippling effect on the institutional memory of these agencies.

10.2.1.1 Tourism

Tourism stake holders are of the opinion that the officials dealing with land restitution matters are not adequately knowledgeable on tourism operations and are therefore not equipped to facilitate land claim negotiations and agreements. Accordingly, claimants are often ill advised
and unrealistic expectations are created. On the other hand, communities are not adequately supported with legal and technical advice to allow them to make the best decisions.

Claimant communities are often ill informed regarding the varied direct and indirect benefits flowing from tourism operations and are usually more interested in the direct financial benefits.

Although the co-management agreements are aimed at benefiting communities as land owners through benefiting sharing, they are often not satisfied and which to become actively involved in the management of protected areas to which they have title and even expect to get paid positions, offices, transport and other benefits from within the protected area management structures.

Communities are of the opinion that the private sector is only interested in making money and does not make an attempt to understand communities and to work with them for the benefit of all.

10.2.1.2 Mining

DME officials are not adequately capacitated to assess compliance with SLAs.

Resolving of land issues for mining is linked closely to the benefits accrued from the negotiation. Should the tribe benefit above the community, or the community benefit above the individual or should the individual; benefit above the community? As the benefits are not perceived to be sufficient or far enough reaching, communities become more militant and demanding. It is clear that community needs are often so great that the benefit will be limited in its effect and there will never be consensus where the funding should be made. The mining company becomes a very accessible partner in those areas where other institutions are not as visible and service delivery has been a problem. Mining companies are finding different models to benefit their stakeholders but these have varying success. Leasing of land from owners and municipalities has also introduced the issue of lease value with no clear process whereby this value is set.

There is a need for some communities to be coached in their rights and made aware of their role in the land negotiations with mining companies. Certain tribes have employed legal consultants and other specialised support to enable them to negotiate with large corporate entities and have successfully concluded commercial partnership agreements (such as the Royal Bafokeng Nation) or community development agreements (such as the Baphalane Ba Matserre community). Where resources are not available for communities to employ these support resources it is important the Government, as the independent representative of the people, should provide coaching and support.

10.2.1.3 Land Claims

Land Claims communities often complain that they are not taken seriously and that they are disrespected by government and industry alike. They feel that they have to make do with crumbs and are not treated fairly when it comes to benefits on the land that they are claiming. They feel that they often have to just accept what is given to them and that they don’t always know what is fair – due to the lack of capacity and support to them. They are of the view that government and industry or developers especially in the mining sector should ensure that they have sufficient support to engage on an equal footing with all information on options available to them.
Due to the nature and composition of land claimant communities that are often amongst the poorest of the poor and often living dispersed far away from the areas that they were removed from, they are often not properly informed or effectively communicated with.

There is a serious need for capacitating, regular communication and explanation of the rights to such communities. If this is not done it leads to unrealistic expectations, misunderstandings and frustration, conflict and wrong perceptions. Unfortunately most claimant communities cannot afford to hire consultants and is thus reliant on government to provide support – this is often also not possible due to lack of government capacities and resources.

10.2.2 LACK OF INSTITUTIONAL FRAMEWORKS TO DRIVE FOCUSSED DEVELOPMENT OBJECTIVES

10.2.2.1 Tourism

The institutional frameworks are not always in place to drive focused delivery around specific national strategies, such as the lacking institutional capacity in the land reform structures that is struggling to provide claimant communities with the necessary advice, support mechanisms and procedures, access to technical and financial resources and implementation support that would ensure successful use of the land potential.

10.2.3 NO MEDIATION AND CONFLICT RESOLUTION MECHANISM

Land Claims is inherently an emotional historical issue where individuals and communities have been disrupted. The process of redress have similar tensions attached to it and competing claims and conflict between government, land owners and claimants is thus a regular occurrence. Unfortunately very little capacity and skill exist to address these issues – additional support from government and NGO’s is required in this area and should also provide a conflict resolution mechanism and procedure.

10.2.4 NATIONAL LEGISLATION FORCES UNFUNDED MANDATES DOWN TO LOCAL LEVELS

10.2.4.1 Land Claims

In the case of Co-management forums in Conservation areas Conservation Authorities is required to facilitate and work with claimant communities in Co-Management Committees where land in Nature reserves is restored unfortunately this is most of the time unfunded mandates and is causing problems where communities don’t even have funds for transport to attend to meetings. The conservation agencies often also don’t have financial resources for support to the communities and even there officials are not capacitated to deal with all the complexities on co-management of Reserves or Parks

10.2.5 INSUFFICIENT MONITORING AND CONTROL MECHANISMS

There is no post-settlement monitoring and evaluation system in place that can determine sustainability and optimal land use and benefits from transferred land or land agreements between industry and claimants. There is also no monitoring mechanism in place that can effectively monitor the successes achieved from implementing land use plans and frameworks. This makes it almost impossible to determine best practice and improve planning, implementation and returns from different land management plans, mechanisms and programmes with reasonable certainty.
10.2.5.1 Tourism

No proper national or provincial wide research or monitoring has been done on the success or failure of tourism-related land restitution projects and programmes, which makes it difficult to learn from past successes and failures. It also appears that very little control is done over project initiated to date. It is an imperative that such monitoring and control is in place and that the best models are identified and the information and experiences analysed and disseminated to government and other role players involved in these projects to learn from.

10.2.5.2 Mining

In all the research little has been said about monitoring and control mechanisms so it is often difficult to measure the successes and failures with any accuracies. These mechanisms are essential for developing appropriate responses and should be included in every land agreement.
11 RELEVANT SPATIAL GUIDELINES IN THE NATIONAL DEVELOPMENT PLAN

The National Schema for Spatial Targeting (NDP p258) identifies the following spatial definitions which all have relevance to the subject under review:

- **National Competitiveness Corridor** – a corridor of logistical hubs, road, rail, fuel & other infrastructure
- **Nodes of Competitiveness** - clusters of localities that account for at least 5% of Gross Domestic Product (GDP)
- **Rural Restructuring Zones** - new settlement formation
- **Transnational Development Corridors** - corridors critical to an integrated southern Africa economy
- **Resource-Critical regions** - natural resources that provide ecosystem lifelines and have high value mineral resources – may require special policies to ensure sustainability
- **Special Intervention Areas** - requiring particular forms of state support for specified periods
  - **Job intervention zones** - areas that have lost more than 20% of jobs
  - **Growth management zones** - Areas of rapid anticipated growth requiring special planning and management
  - **Green economy zones** - potential to create “green jobs”. Spatial targeting should also be designated by provincial and local government.

The strategies recommended by this process are therefore also closely aligned with the strategies of the NDP.
12 RECOMMENDATIONS

Based on the above issues raised, the following recommendations were made which are elaborated upon in Volume 2 of this report:

12.1 KEY PRINCIPLES

The plan is developed with the following principles in mind:

- Optimised land use
- Focus effort around areas of opportunity and benefits and opportunities flowing from land development are received by previously disadvantaged communities and areas
- All stakeholders capacitated to enable them to comprehend and participate meaningfully and public involvement is inclusive of all persons and groups with an interest in the matter being decided with adequate access to information
- Accessible participatory structures should be created to allow interested and affected parties to express their concerns or support decisions at sufficiently early stage in the decision-making process
- Decisions must be made in the public domain, with written reasons available to any interested party on request
- Sustainable livelihoods- optimum utilization all sectors in long term
- Natural, environmental and cultural resource base maintained and/or improved
- All stakeholders work effectively to ensure benefits accrue locally although the appropriateness of the land use
- Development undertaken in accordance with the law and decisions must be taken within statutorily specified time frames
- Land which is currently in agricultural use shall only be reallocated to other uses where real need exists and prime agricultural land should remain in production
- Common vision and focus in term of land use development and implementation - all spheres of government
- Appropriate resources made available to achieve potential
- Informed decision making based on proper consultation and research
- Planning and development decisions should take account of and relate to the sectoral policies of other spheres and departments of government
- Promote mixed use development.

12.2 KEY STRATEGIES

Based on the assessment phase, a series of interdependent strategies are put forward as part of a Preliminary Management Plan for Resource Critical Regions. All of these strategies have to be implemented simultaneously for the overall Plan to be successful. Appendix F provides a matrix reflecting how the individual strategies of this Plan in more than one way are addressing the large range of issues identified during the assessment phase.

The following strategies make up the important pillars of this Plan:

- Focussed and Integrated Spatial Land Use Planning
- Economic Intervention
- Bulk Infrastructure Investment
- Focussed Development Structures
- Awareness and Capacity Building
- Prioritising Land Claims In Resource Critical Regions
- Designated Development Agency
13 CONCLUSION

The nature of the challenge as stated in Section 1 is clearly borne out by the documentary reviews and the comments and concerns raised by stake holders during the study. There is therefore good reason for concern regarding the diminishing effect of competing interests in land use within the province, especially between tourism, mining and land claims. This is borne out by the key issues that were raised by stake holders (refer Section 10).

To assist in the development of a home grown model that is founded on actual case studies, the Platinum Belt in the North West Province was identified and selected as the most important hot spot in the province where all the mentioned characteristics exist. Although stake holders from other areas also participated in the process, the Platinum Belt area was heavily represented in the reviews and stake holder consultations. It is believed that the same issues exist in other parts of the province and that the strategies developed here will also be relevant and useful to the other areas with similar challenges.

The issues raised by the stake holders during interviews and during the workshop process will be substantially addressed if the Key Strategies developed by them (refer Section 12.2) were to be implemented. What is encouraging, is the fact that the participants at the well-attended workshop unanimously committed to the strategies proposed for incorporation into the North West Management and Mediation Strategy and Plan for Tourism, Mining and Land Claims.

This document (Volume 1 – Situational Analysis) forms the background to the final document: Volume 2 - North West Management and Mediation Strategy and Plan for Tourism, Mining and Land Claims.
14 REFERENCES

Agreement between DLA and DEAT
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Cabinet Memorandum Re: Land Claims in Conservation Areas

Co-Management Agreement between North West Parks and Tourism Board and the Barokologadi Communal Property Association for the Madikwe Game Reserve

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Memorandum of Understanding: Cooperation and Collaboration on the Proposed Establishment of the Heritage Park Area and Related Activities

National Co-management Settlement Framework

National Growth Path

North West Provincial Growth and Development Strategy (PGDS), 2004 To 2014

North West Parks and Tourism Board, Greater Taung Protected Area Concept Development, 2012/2014


Restitution of Land Rights Act Act 22 of 1994

Restitution of Land Rights Act Act 22 of 1994 (Rules)

South African Land Policy
APPENDIX A: HISTORY OF LAND TENURE AND THE BAFOKENG (QUOTED DIRECTLY FROM A MANSON (UNDATED))

Today’s North-West Province comprises the former western Transvaal, the dissolved “homeland state” of Bophuthatswana, and a fragment of what was known as the northern Cape province. Its residents consist of largely Setswana-speaking African people and Afrikaners, many of them members of an established but now fragmenting agrarian class. Despite the social fragmentation caused by decades of divisive policies, the two races have interacted and lived in close proximity for over 150 years. However, access to land has been a key requirement and source of some degree of friction for the population of this province, whose economy until comparatively recently, was based on agriculture.

The supposition that a mere 13% of South Africa’s land rested in black hands, and that the infamous Land Acts of the twentieth century capped all further land acquisition by Africans as been shown to incorrect, despite the deeply discriminatory and skewed nature of land distribution in South Africa. In the former South African Republic and Transvaal Colony (then Province) blacks retained access to significantly extensive tracts of land, through “reserves” established by the white settlers, and by actively engaging in the purchase of farms through a system of Trusteeship.

After the white Voortrekkers settled in the region in the late 1830’s, they considered all the land to be theirs by right of conquest and occupation. Private ownership of land by Africans was not open to consideration. However, the presence of the Lutheran missionaries (of the Hermannsburg Missionary Society), among most of the Batswana-speaking chiefdoms of the western Transvaal was to prove a crucial opportunity to gain access to land. The missionaries, many of them from north German rural backgrounds, viewed secure land tenure as a means of ensuring both their own material security and the support of the people among whom they proselytized.

Consequently many African groups took to buying land through the intercession of the missionaries. They would raise the purchase price for the particular farm they wanted and after payment, nearly always to a white owner, it would be registered in the name of the missionary on behalf of the “tribe”, more often than not with the name of the current chief or kgosi (pl dikgosi) appearing on the Title Deed. The funds for the purchase were raised in a number of ways. The kgosi could collect the necessary resources, in cash or cattle, from his followers on a voluntary basis, he could extract tribute in the form of fines or taxes, (for example on returning migrants from the Diamond Fields), or he could make a contribution from his own coffers. Quite often the purchase of the farm would be raised by all of these means.

Missionary mediation in land purchases only applied up to 1881; thereafter Africans could purchase land in the name of a functionary of the State-usually the Secretary or Minister for/or Native Affairs. The process of registering the farms acquired before this date duly followed this change in the law. Again the property had to be registered in the name of the kgosi. This “tribal-Trust tenure” system endured well into the 20th, despite the lack of legal obligation on the part of Africans to register their land in Trust with the state. It has been argued that the system was maintained because of misplaced colonial conceptions of the “tribe” as the key social structure of African society. Nevertheless, in the western Transvaal, it enabled blacks to retain the right to purchase land outside the designated areas set aside for them under the 1913 and 1936 Land Acts. In the Rustenburg region alone in excess of 80 farms were acquired through this means. It has been estimated that at the beginning of the 20th, the Bafokeng alone “owned” 20% of all African-held land in the Transvaal.

The necessity to register land in the names of the dikgosi led to the creation of what Capps** has termed the tribal-landed trust “regime”. By forcing people to register land in the name of their “traditional leaders”, it obscured the identity of other buyers and privileged the chiefs’ rights above those of his subjects or followers. Many of these syndicate or family purchases were made by groups who were independent from the ruling elites or families. Though Capps** thesis applies to the Bafokeng chiefdom, living north-west of present-day Rustenburg, it can be applied to all traditional polities in the wider region. As he states the system “concentrated in the hands of the chiefs the de facto powers of control previously enjoyed by the “independent” land syndicates under the legal cover of mission registration”. The position of the dikgosi in the colonial period was shored up by a definition of the “tribe” as a legal entity with the capacity to enter into a number of contracts and obligations in the name of the chief. Capps’s argument as it later applies in relation to the Bafokeng will be critically examined.

APPENDIX B: MINING AND MINERALS OF THE NORTH WEST PROVINCE
Mineral Map of North West Province
Mining and Minerals in North West Province (Du Toit, undated)

<table>
<thead>
<tr>
<th>Mineral</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Platinum Group Metals (PGMs)</strong></td>
<td>Nine of the 14 producing platinum group metal mines in South Africa are situated in the western limb of the Bushveld Complex in the north-eastern part of the Province. These mines have, for several decades, yielded the bulk of the total platinum group metal output from the world famous Merensky Reef and UG2 chromitite layer of the Bushveld Complex, though the eastern limb and platreef are growing rapidly in importance. Substantial earnings also come from copper and nickel by products.</td>
</tr>
<tr>
<td><strong>Gold</strong></td>
<td>The Klerksdorp goldfield, constituting seven producing mines, is part of the larger Witwatersrand goldfield. It is an important contributor to the South African gold, uranium and pyrite (sulphur) production. These mines still have a substantial reserve base of gold-bearing reef which, at the current rate of exploitation, is likely to last for many years to come. Gold is being successfully exploited at the Kalgold (Goldridge prospect) operation north of Kraaipan and is intermittently produced near Amalia. Gold exploration in the Kraaipan area has also led to the discovery of low grade platinum mineralisation in the area.</td>
</tr>
<tr>
<td><strong>Chromium</strong></td>
<td>South Africa’s production of chromium comes from the mineral chromite, produced from mines sited on chromitite seams south and west of the platiniferous Merensky Reef of the western Bushveld Complex in the Rustenburg area and west of Pilanesberg (Mankwe area). About one half of South Arica’s chromite production comes from the Province. Ferrochrome is produced by four plants, two of which are located in Rustenburg and two elsewhere in the district.</td>
</tr>
<tr>
<td><strong>Vanadium Pentoxide</strong></td>
<td>Vanadium pentoxide is produced from magnetitite layers well north of the Merensky Reef in the area northeast and northwest of the town of Brits.</td>
</tr>
<tr>
<td><strong>Gabbro-Norite</strong></td>
<td>There are more than 20 operations which quarry gabbro-norite of the Bushveld Complex, in the area northeast of Rustenburg, producing what is known in the trade as black granite which is used extensively as cladding material for prestigious buildings and for tombstones.</td>
</tr>
<tr>
<td><strong>Fluorspar</strong></td>
<td>Acid and metallurgical grade fluorspar is currently produced from two mines hosted in dolomites in the vicinity of Zeerust and Marico, while limestone and dolomite are produced from quarries in the Lichtenburg District and two in the Zeerust District.</td>
</tr>
<tr>
<td><strong>Manganese Dioxide</strong></td>
<td>Manganese dioxide is exploited as surficial manganiferous earth accumulations on dolomite in the Lichtenburg district.</td>
</tr>
<tr>
<td><strong>Iron Ore</strong></td>
<td>Iron ore (specularite) is produced on a small scale from ferruginous shales of the Pretoria Group some 40 km northwest of Rustenburg while refractory andalusite is exploited from only one quarry in the Marico District.</td>
</tr>
<tr>
<td><strong>Zinc and Lead</strong></td>
<td>The production of zinc and lead concentrates from the Pering Mine southwest of Vryburg, came to an end in 2002, because the orebody has been mined out. The host rock is dolomite of the Transvaal Supergroup.</td>
</tr>
<tr>
<td><strong>Asbestos</strong></td>
<td>Blue asbestos (crocidolite) exploitation, from operations located at Pomfret on the northern border of the Province was terminated in 1998.</td>
</tr>
<tr>
<td><strong>Slate, Dimension Stone, Andalusite, Pyrophyllite</strong></td>
<td>Quarrying of slate (for floor tiles) takes place from 9 active operations in the districts of Swartruggens, Marico and Koster, while dimension stone is being exploited near Ottosdal. Andalusite is produced from the weathered shales in the vicinity of Marico while talc and pyrophyllite are quarried in the Lichtenburg district.</td>
</tr>
<tr>
<td><strong>Limestone</strong></td>
<td>Limestone is quarried at several sites for the use in both the cement industry and for agricultural purposes while shale is mined for cement manufacture. As far as could be ascertained, clay is mostly mined for use in the brickmaking industry near every larger growth centre in several districts.</td>
</tr>
<tr>
<td>Mineral</td>
<td>Description</td>
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<td>------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Silica</td>
<td>Pure silica sand is produced from the slopes of the Magaliesberg in the Brits and Rustenburg Districts and used in the process of glass manufacture.</td>
</tr>
<tr>
<td>Diamonds</td>
<td>Diamonds are mined from kimberlite fissures north of Swartruggens and from alluvial materials in the Lichtenburg-Ventersdorp and Schweizer Reneke areas, as well as along the Vaal river.</td>
</tr>
<tr>
<td>Salt</td>
<td>Salt works are found in the Vryburg and Delareyville Districts as well as along the Vaal River.</td>
</tr>
<tr>
<td>Aggregate and Quartzite</td>
<td>The construction industry is supplied with aggregate derived from norite waste at dimension stone quarries as well as quartzite obtained from the Magaliesberg Formation, while building sand is also derived by weathering of the latter formation.</td>
</tr>
</tbody>
</table>
APPENDIX C: REVIEW OF LEGISLATIVE DOCUMENTS

THE CONSTITUTION OF SA, S25 –PROPERTY & RESTORATION OF LAND RIGHTS

The Constitution of South Africa, 1996, is the supreme law of the country of South Africa. It provides the legal foundation for the existence of the Republic, sets out the rights and duties of its citizens, and defines the structure of the government. The current constitution, the country’s fifth, was drawn up by the Parliament elected in 1994 in the first non-racial elections.

The bill of rights enumerates the civil, political, economic, social and cultural human rights of the people of South Africa. Most of these rights apply to anyone in the country, with the exception of the right to vote, the right to work and the right to enter the country, which apply only to citizens. They also apply to juristic persons to the extent that they are applicable, taking into account the nature of the right.

Section 25 of the Constitution deals with the right to property, limited in that property may only be expropriated under a law of general application (not arbitrarily), for a public purpose and with the payment of compensation. The state must take reasonable measures to enable citizens’ access to land on an equitable basis and to provide tenure which is legally secure or restitution of property or equitable redress.

COMPANIES ACT

The Companies Act, No 71 of 2008, has a range of regulatory, accountability, transparency and governance requirements that South African registered companies must adhere to. The purpose of the Act is to promote compliance with the Bill of Rights as provided in the Constitution in the application of company law, to encourage transparency and high standards of corporate governance and provide for the balancing of rights and obligations of shareholders and directors.

Section 72 (4) of the Companies Act, 2008, and regulation 43 (2), state that every state owned company, listed public company and any other company that scored above 500 points for its public interest score (the sum of number of employees and various financial indicators) in any of two of the previous five years is required to have a Social and Ethics Committee. This committee will monitor the company’s social and economic development activities, good corporate citizenship, ethics and stakeholder management.

The Social and Ethics Committee is expected to be complementary to the Audit Committee already within most Board structures and should also facilitate compliance with the requirements of King III.

PHYSICAL PLANNING ACT 25 OF 1991

The Act promotes the orderly physical development of the Republic, and for that purpose to provide for the division of the Republic into regions, for the preparation of national development plans, regional development plans, regional structure plans and urban structure plans by the various authorities responsible for physical planning, and for matters connected therewith.

DEVELOPMENT FACILITATION ACT 67 OF 1995
The Development Facilitation Act 67 of 1995 (DFA) expanded on the IDP framework by requiring municipalities to produce land development objectives (LDOs). The subject matter which must be included in the LDOs are those objectives relating to urban and rural growth in the relevant area, including objectives in relation to, the integration of areas settled by low-income communities into the relevant area as a whole, the sustained utilisation of the environment, co-ordination of land development in consultation with other authorities, land-use control, and the optimum utilisation of natural resources. LDOs can thus be described as a policy framework of local government, guiding land development in a particular area of jurisdiction. Their significance relates to the fact that once approved by the Provincial MEC, they have legal status for guiding and managing development in their area of jurisdiction.

Land development applications may either be conducted under the Provincial Ordinances or the DFA depending on the nature and extent of the proposed project and the number of anticipated objections to the project. The DFA route is not mandatory as section 31 of the Act states that development applicants “may” apply for the establishment of a land development area in terms of this Act. If the DFA route is followed the land development applications must be lodged with the Provincial Land Development Tribunal. It is important to note that once a land development application is brought under the DFA, the applicant is barred from bringing similar applications under any other laws. Furthermore, if the tribunal rejects the application, the applicant may not approach the local council until two years have elapsed after the decision. This is a major disadvantage as opposed to the local route where one may still approach the DFA Tribunal if the local council refuses the application. Regulations in terms of the Development Facilitation Act were published (GG20775) on the 7th of January 2000. Section 31 of GN R1 requires that an environmental evaluation be conducted before land development application may be approved.

**LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT 32 OF 2000**

The purpose of this Act is to *inter alia* provide for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities, and ensure universal access to essential services that are affordable to all, to establish a simple and enabling framework for the core processes of planning, performance management, resource mobilisation and organisational change which underpin the notion of developmental and to establish a framework for support, monitoring and standard setting by other spheres of government in order to progressively build local government into an efficient, frontline development agency capable of integrating the activities of all spheres of government for the overall social and economic upliftment of communities in harmony with their local natural environment.

In order to achieve the purpose of the Act, each Municipality must, within a prescribed period, adopt a integrated development plan (IDP) for the development of the municipalities which links, integrates and co-ordinates plans and takes into account proposals for the development of the municipalities, aligns the resources and capacity of the municipalities with the implementation of the plan, forms the policy framework and general basis on which annual budgets must be based and which is compatible with national and provincial development plans and planning requirements binding on the municipality in terms of legislation.

Key features of these IDPs are that they seek to achieve integrated and sustainable settlement while at the same time ensuring the environmental sustainability of the area. The IDPs adopted by the above municipalities are the principal strategic planning instruments that guide and inform all planning and development, and all decisions with regard to planning, management and development within the municipal jurisdiction. Furthermore, the IDPs bind all other persons to the extent that those parts of the integrated development plan that impose duties or affect the rights of those persons have been passed as a by-law.
Municipal Planning and Performance Management Regulations were promulgated in 2001 and which regulations provide greater clarity as to the detail that must be contained in an IDP.

A Spatial Development Framework (SDF) is an important component of an Integrated Development Plan (IDP) that is required in terms of the Act. An SDF must in accordance with the Act “include the provision of basic guidelines for a land use management system for the municipality.” One of the main goals of an SDF is to make sure that development of land and the usage of land are done in such a manner that the needs of the people living in the municipal areas are met while at the same time ensuring that the natural environment is not impacted thereby echoing the principle of sustainable development.

INTERIM PROTECTION OF INFORMAL LAND RIGHTS ACT

As the title indicates, the Interim Protection of Informal Land Rights Act (31 of 1996) acknowledges informal rights to land. The Act was promulgated in response to the constitutional duty that rests on the government to remedy instances of insecure tenure resulting from past racially discriminatory laws and practices.

This Act is an interim measure to provide protection to the holders of informal rights, pending the substitution/upgrading of these rights by the process of land tenure reform in terms of applicable legislation.

The categories of informal rights that are protected in terms of the act are the following:

- the holders of informal rights to land which includes the occupation of, or access to land in terms of
- any tribal, customary or indigenous law or practice of a tribe; or
- the custom, usage or administrative practice in a particular area or community, where the land at any time vested in the South African Development Trust; or
- the government of any area for which a legislative assembly was established in terms of the Self-Governing Territories Constitution Act; or the governments of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei,
- the right or interest in land of a beneficiary under a trust arrangement in terms of which the trustee is a body or functionary established or appointed by or under an Act of Parliament or the holder of a public office;
- beneficial occupation of land for a continuous period of not less than five years prior to 31 December 1997; or
- the use or occupation by any person of an erf as if he or she is the holder of a right mentioned in the Upgrading of Land Tenure Rights Act, 1991.

The protection against the deprivation of informal rights in land and which is the motive for this Act is found in the provisions of section 2 where any sale or other disposition of land shall be subject to the existing informal land rights in that land.

The act further provides that land rights holders in areas as mentioned above should be consulted before any developments or deprivation of rights can take place and that they are entitled to compensation if their rights are affected. The act further also bind the state if they which to develop on such land or deprive a community or individual of rights in such areas.

In terms of the scope of the mediation strategy it is important to note that all those vast areas of the North West Province having been part of the former Bophuthatswana are affected by requirements of this act, compelling mines, conservation authorities, government in general and all developers to consult communities living in areas with informal rights.
NATIONAL FRAMEWORK FOR SUSTAINABLE DEVELOPMENT

The primary responsibility for co-ordination and implementation of sustainable development programmes rests with government. Integrating sustainability into national development policies is one of goals of the United Nations Millennium Declaration, which South Africa has endorsed.

In July 2008, the Cabinet passed the National Framework for Sustainable Development (NFSD). The NFSD is designed to “initiate a broad framework for sustainable development in South Africa that can serve as a basis from which to develop and consolidate a national strategy and action plan”. The NFSD proposes a national vision, principles, trends, strategic priority areas, and a set of implementation measures that are intended to enable and guide the development of the national strategy and action plan.

The NFSD discusses the various environmental and social risk areas facing South Africa and maps out five strategic priority areas:

- Enhancing systems for integrated planning and implementation.
- Sustaining our ecosystems and using resources sustainably.
- Investing in sustainable economic development and infrastructure.
- Creating sustainable human settlements.
- Responding appropriately to emerging human development, economic and environmental challenges.

The NFSD states that in order to embark on the journey (‘to a sustainable, economically prosperous and self-reliant nation’) it needs various things – a robust institutional framework, an action plan or roadmap to make sense of the five strategic priority areas, and “to ensure that everyone is on board and stays on board …for this we need ongoing consultation and communication”.

And it is this last requirement which sees the government holding regular national summits to which all interested parties are invited to attend. Critics say that South Africa does not actually having a national co-ordinated policy on sustainable development. It’s still on its way to developing one.

The purpose of this Framework is to enunciate South Africa’s national vision for sustainable development and indicate strategic interventions to re-orientate South Africa’s development path in a more sustainable direction. It does not present detailed strategies or actions, but rather proposes a national vision, principles, trends, strategic priority areas and a set of implementation measures that will enable and guide the development of the national strategy and action plan.

It describes in broad terms how the existing activities of government and its social partners will be strengthened, refined and realigned in a phased manner to achieve inter-related sustainable development goals relating to the economy, society and the environment, and how governance systems will be capacitated to facilitate this process.

This Framework provides the basis for a long-term process of integrating sustainability as a key component of the development discourse and shows South Africa’s commitment to the principles developed at international summits and conferences in the economic, social and environmental fields, including the 2002 World Summit on Sustainable Development.

The Framework will be used by all social partners and all organs of state within the national, provincial and municipal spheres to progressively refine and realign their policies and decision
making systems in order to establish a coherent and mutually consistent national system aimed at promoting sustainable development.

This process will be facilitated by the development of a coherent set of sustainable development indicators; making investments in capacity building, research and development and information technology; and by the development of a national sustainable development strategy which identifies and prioritises specific government interventions.

The notion of “sustainable development” is often used in policy and strategy documents to refer to many different things, but it is rarely defined to mean anything specific. We are now obliged by our international commitments, constitutional principles and statutory laws to justify our national policies and development strategies in terms of sustainable development.

Our vision gives effect to the notion that sustainable development should be “an integration of governance, multiple voices, processes and action in decision-making towards a common goal within set parameters and a common definition of policy choices for promoting a sustainable development agenda.

Vision
The national vision for sustainable development is as follows:
South Africa aspires to be a sustainable, economically prosperous and self-reliant nation state that safeguards its democracy by meeting the fundamental human needs of its people, by managing its limited ecological resources responsibly for current and future generations, and by advancing efficient and effective integrated planning and governance through national, regional and global collaboration.

Our vision is informed by the environmental, social and economic and other fundamental human rights enshrined in our Constitution, and the global and national priorities captured in the MDG, JPOI and the government’s macro socio-economic policies. It is a projection of our nation’s aspirations of achieving a better quality of life for all now and in future, through equitable access to resources and shared prosperity.

It places the nation on a developmental trajectory which of necessity must move society towards greater efficiency and innovation in resource use, and the integration of social, economic, ecological and governance systems. The national vision is underpinned by a set of principles that must guide all of us in all decisions and actions taken to achieve the vision. These principles are captured as:

- The “first order” or fundamental principles relate to those fundamental human rights that are guaranteed in the Constitution, and underpin the very nature of our society and system of governance. These principles affirm the democratic values of:
  - Human dignity and social equity
  - Justice and fairness
  - Democratic governance

The “substantive principles” address the content or conditions that must be met in order to have a sustainable society and are based on principles already enshrined in legislation and policies. The principles underscore a cyclical and systems approach to achieving sustainable development and are as follows:

- Efficient and sustainable use of natural resources
- Socio-economic systems are embedded within, and dependent upon, eco-systems
- Basic human needs must be met to ensure resources necessary for long-term survival are not destroyed for short term gain
The “process principles” establish a few clear principles that apply specifically to the implementation of the national strategic framework for sustainable development. The most important in this regard are:

- Integration and innovation
- Consultation and participation
- Implementation in a phased manner

Five priority areas for strategic intervention, and supporting priority recommendations, was based on the analysis of the natural resources, economic, social and governance trends.

South Africa has already taken numerous steps in responding to the global goals and targets. This has happened at the level of planning, by developing policies and strategies to establish priorities for action and expenditure, as well as the implementation level by rolling out programmes and projects.

Despite the fact that considerable progress have been made, there are still gaps and various challenges to delivery on sustainable development objectives. The most important in this regard is bridging the gap between the first and second economies, eradicating poverty and improving the quality of life of poor South Africans. Another major challenge is changing human behaviour in a manner that promotes sustainable development and reduces unsustainable consumption and production patterns.

The five strategic priority areas for action and intervention that are necessary to reach the desired state of sustainable development described in the national vision reflect a systemic and integrative approach and seek to transcend traditional divisions and sectors. These priority areas, or “focus” areas to achieving sustainable development are reflected as:

- Enhancing systems for integrated planning and implementation
- Sustaining our ecosystems and using natural resources efficiently
- Economic development via investing in sustainable infrastructure
- Creating sustainable human settlements
- Responding appropriately to emerging human development, economic and environmental challenges

The implementation of the Framework calls for decision-making and action at various levels. In order to embark on our journey towards being “a sustainable, economically prosperous and self-reliant nation” we need certain things. The first is the identification of an existing institutional mechanism that can facilitate cross-sectoral and multi-stakeholder coordination.

To successfully implement this National Framework for Sustainable Development and achieve sustainable development objectives and targets, the nation as a whole must increasingly share in the common vision. All sectors, including all elements of the state plus civil society, organised labour and business, need to take part in the social contract to implement the NFSD and the emergent national strategy to follow.

We need to promote simple actions on a large scale. As understanding of sustainable development increases, and it becomes clear that this is the key mechanism for building capacity and governance to achieve human development based on sustainable production and consumptions systems, government and society across all spheres and all sectors will approach and address the issues identified in this strategy with the seriousness they deserve.

In deciding on resource allocation and in making policy choices, the Executive should seek to give effect to the vision of sustainability. Priorities and commitments should be clearly articulated. While sustainability concerns do impact on all facets of life, we should keep our focus on the identified five priority areas for strategic intervention and the importance of
mainstreaming these into the Accelerated and Shared Growth Initiatives (ASGISA) and related programmes. These priority areas should, over the coming years, serve as catalysts for policy changes that will facilitate the achievement of the desired ideal state as articulated in the national vision for sustainable development.

NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998

The National Environmental Management Act 107 of 1998 (NEMA) came into operation on 29 January 1999. The Act is intended to provide a framework for integrating good environmental management into all development activities and to promote co-operative environmental governance with regard to decision-making by State organs on matters affecting the environment. Section 48 of NEMA provides that NEMA is binding on the State except in so far as any criminal liability is concerned. Certain of the key aspects of NEMA that may be relevant to the Magaliesberg are set out below.

The NEMA contains certain National Environmental Management principles in section 2. These principles apply throughout the country to the actions of all organs of state (as defined in the Constitution to include any department of state or administration in the national, provincial or local sphere of government) that may significantly affect the environment. Section 48 of NEMA provides that NEMA is binding on the State except in so far as any criminal liability is concerned. Certain of the key aspects of NEMA that may be relevant to the Magaliesberg are set out below.

NEMA provides for the compilation of environmental implementation plans and management plans by various departments, the actions of which effect the environment or which are involved with the management of the environment, and are intended to promote the co-ordination of environmental functions and the implementation of obligations within the government. One of the principal concerns with regard to the administration of environmental laws has been the lack of co-ordination and clear allocation of responsibility between the various governmental departments administering environmental laws. The purpose of environmental implementation and management plans is therefore to co-ordinate and harmonise the environmental policies, plans, programmes and decisions of the various national departments that exercise functions that may affect the environment or are entrusted with powers and duties aimed at the achievement, promotion, and protection of a sustainable environment, and of provincial and local spheres of government, in order to:

- minimise the duplication of procedures and functions; and
- promote consistency in the exercise of functions that may affect the environment.

Chapter 5 of NEMA deals with integrated environmental management, including environmental impact assessments. NEMA is the primary statute regulating so-called "listed activities" and "specified activities" that require environmental authorisation prior to the commencement, typically following some form of environmental impact assessment. The provisions of Chapter 5 of NEMA have been amended over time, including most recently by the National Environmental Management Amendment Act 62 of 2008.

The Minister or an MEC may, in terms of section 24(2), identify those activities which may not commence without an environmental authorisation from the competent authority. Geographical areas based on environmental attributes in which specified activities may not commence without environmental authorisation from the competent authority may also be identified. Furthermore, geographical areas based on environmental attributes in which specified activities may be excluded from authorisation by the competent authority may be identified. The importance of biosphere reserves has been specifically recognised in the context of environmental authorisations. Please refer the section dealing with NEMA in Table A for further details in this regard.

Since 1997, the requirement has existed in South African law to complete a form of “EIA” and to obtain appropriate authorisation based on environmental considerations before undertaking
certain activities. With the environmental law reform process there has been a trend towards NEMA (and its related “specific environmental management Acts”) being used as the primary items of general environmental legislation in the country, with the gradual diminishing of the importance of the Environment Conservation Act 73 of 1989 (ECA). A major step forward in this process first occurred in July 2006, when NEMA listed activities (GN 386 and GN 387) and NEMA “EIA Regulations” (GN R385) came into effect. On 18 June 2010 new NEMA “EIA Regulations” (NEMAREG R543) were promulgated on 18 June 2010 and which were subsequently amended on two separate occasions and came into operation on 2 August 2010. With these EIA Regulations coming into operation, the previous EIA Regulations (NEMAREG R385) were repealed, subject to certain transitional provisions contained in regulation 76.

In terms of section 24 of NEMA, the potential impact on the environment of listed activities must be considered, investigated, assessed and reported on to the competent authority charged by NEMA with granting the relevant environmental authorisation.

The Minister, and every MEC with the concurrence of the Minister, may identify:

- activities which may not commence without environmental authorisation from the competent authority;
- geographical areas based on environmental attributes in which specified activities may not commence without environmental authorisation from the competent authority. It is important to note the inclusion of identified geographical areas in the latest NEMA EIA regulations including both Gauteng and the North West;
- geographical areas based on environmental attributes in which specified activities may be excluded from authorisation by the competent authority;
- individual or generic existing activities which may have a detrimental effect on the environment and in respect of which an application for an environmental authorisation must be made to the competent authority.

Furthermore, the Minister, and every MEC with the concurrence of the Minister, may make regulations inter alia laying down the procedure to be followed in applying for, the issuing of and monitoring compliance with environmental authorisations.

Regulations in terms of Chapter 5 of NEMA (NEMAREG R543) also came into operation on 2 August 2010 thus repealing the previous EIA Regulations (NEMAREG R385) subject to certain transitional provisions.

A fundamental element of any EIA process involves public participation by so-called Interested and Affected Parties (I & APs) who are invited to interact with the process, including by providing input at public meetings.

Chapter 7 of NEMA provides for inter alia private prosecutions of environmental transgressors, the protection of workers refusing to do environmentally hazardous work, the protection of whistleblowers, criminal proceedings and the creation of employers’, employees’ and directors’ liability, as well as a duty of care to the environment, the “remediation of environmental damage” and the control of emergency incidents. An emphasis of many of these provisions is on facilitating enforcement by civil society rather than on governmental enforcement, a development which can only increase the prospects of civil and criminal actions and other challenges being brought for transgressions of the law. Section 28(1) of NEMA imposes a duty of care on every person who causes, has caused or may cause significant pollution or environmental degradation to take reasonable measures to prevent such pollution from occurring, continuing or recurring. It is also states that “in so far as harm to the environment is authorised by law or cannot reasonably be avoided or stopped, measures should be taken to minimise and rectify such pollution or degradation of the environment".
ENVIRONMENT CONSERVATION ACT 73 OF 1989

The majority of the Environment Conservation Act 73 of 1989 (ECA) has now been repealed and only a few provisions and regulations promulgated in terms thereof remain of relevance. It must however be noted that in terms of section 40 of the ECA, the provisions of the ECA, including the regulations and any notice issued under the ECA, shall bind the State, including any provincial administration, except in so far as criminal liability is concerned.

Provincial noise control regulations apply in certain provinces (including Gauteng) and various municipalities, such as the former City Council of Pretoria and the former Town Council of Hartbeespoort adopted noise control regulations or by-laws which remain in effect until such time that they have been repealed.

Prior to the repeal of section 24 of the Act, Plastic Bags Regulations were promulgated in GN R543 and in terms of section 24B of the Act and which regulations came into effect on 9 May 2003.

Prior to the repeal of section 24 of the Act, Waste Tyre Regulations were promulgated in GN R149 and in terms of section 24B of the Act and which regulations came into effect on 30 June 2009.

Prior to the repeal of section 24 of the Act, Regulations for the Prohibition of the Use, Manufacturing, Import, Export of Asbestos and Asbestos Containing Materials were promulgated in GN R341 and in terms of section 24B of the Act and which regulations came into effect on 28 March 2008.

ENVIRONMENTAL CONSERVATION ACT – REGULATIONS REGARDING NOISE, VIBRATION AND SHOCK

In terms of section 25 of the Environmental conservation Act (ECA), the Minister may make regulations with regard to the control of noise, vibration and shock, concerning:

- the definition of noise, vibration and shock;
- the prevention, reduction or elimination of noise, vibration and shock;
- the levels of noise, vibration and shock which shall not be exceeded, either in general or by specified apparatus or machinery or in specified instances or places;
- the type of measuring instrument which can be used for the determination of the levels of noise, vibration and shock, and the utilisation and calibration thereof;
- the powers of provincial administrations and local authorities to control noise, vibration and shock; and
- any other matter which he may deem necessary or expedient in connection with the effective control and combating of noise, vibration and shock.

Such regulations have been made for the Province of Gauteng (GN 5479 of 20 August 1999) as well as the former City Council of Pretoria (GN R2544 of 2 November 1990) and the former Town Council of Hartbeesport (GN R501 of 14 February 1992).

In terms of section 20 of the Regulations all local authorities shall apply these regulations, with the exception of regulations 10 (a), (b), (c) and regulation 11 (a) and (b): Provided that if a local authority has a noise control officer at its disposal, all these regulations shall be applied. Furthermore, a local authority may in terms of section 28A of the ECA apply to the Member of the Executive Council in writing with the furnishing of reasons, for exemption from the application of any provision of these regulations. Exemption from the application of all these regulations shall be considered in accordance with policy determined under section 2 of the ECA.
MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 28 OF 2002

In terms of the previous mining legislation in South Africa, mineral rights were held privately and in some instances by the state. The Mineral and Petroleum Resources Development Act (MPRDA) now vests all mineral rights in the state. Through the transitional provisions included in the MPRDA, mining companies can convert their existing ‘old order’ rights to prospect and/or mine (previously granted under the now repealed Minerals Act) to the ‘new order’ rights introduced by the MPRDA.

The Act has a number of objectives, including to:

- promote equitable access to the nation’s mineral and petroleum resources to all the people of South Africa;
- substantially and meaningfully expand opportunities for historically disadvantaged persons, including women, to enter the mineral and petroleum industries and to benefit from the exploitation of the nation’s mineral and petroleum resources;
- promote economic growth and mineral and petroleum resources development in the country;
- provide for security of tenure in respect of prospecting, exploration, mining and production operations;
- give effect to section 24* of the Constitution by ensuring that the nation’s mineral and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development; and
- ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating.

* This states that everyone has the right to an environment that is not harmful to their health or well-being and to have the environment protected through reasonable legislative measures.

THE MINING CHARTER

The Mining Charter is intended to bring about widespread socio-economic transformation in South Africa’s mining industry. It was developed collaboratively by government and the industry and ratified in October 2002 following the enactment of the MPRDA.

Transformation, as envisaged by the Mining Charter, is an imperative for mining companies active in the South African mining sector. They are required to convert their mineral rights from so-called ‘old order’ to ‘new order’ if they wish to mine on the properties concerned. The Mining Charter stipulates that those seeking conversions will have to have sold, for fair value, 15% of the production of their South African assets to black South Africans or women by 2009. The ownership objective for 2014 is 26%.

As a further step in the transition towards a new system of regulating mining rights, the Mining Scorecard was published in February 2003 to assist in the assessment of companies’ applications for ‘new order’ rights. It sets out a number of transformation criteria as a prerequisite for conversions.

The nine broad criteria are as follows:

- Human resources development
- Employment equity
- Migrant labour
- Mine community and rural development
- Housing and living conditions
- Procurement
- Ownership and joint ventures
• Beneficiation
• Reporting

Although the MPRDA and the Mining Charter is giving good directives in changing the mining sector and aligning it with development objectives the implementation remains difficult and many good intentions still falls through the cracks due to implementation capacity on all levels.

**BIODIVERSITY STEWARDSHIP**

South Africa started with a biodiversity stewardship programme a few years back to secure priority biodiversity on land outside of state-owned protected areas, voluntarily committed to conservation by private landowners and communities through formal agreements. Biodiversity stewardship is part of the National Protected Area Expansion Strategy adopted by the national Department of Environmental Affairs (DEA). National policy, guidelines, and norms and standards for biodiversity stewardship were also developed. Although much has been learnt, he stewardship programme is still evolving, with a coherent agreed national framework beginning to emerge.

Biodiversity stewardship refers to the wise use, management and protection of land that has been entrusted to a land owner or user, recognising that they are custodians of their land (including natural resources and biodiversity) through the sustainable use, management and protection of resources. This is achieved through a biodiversity stewardship agreement between the land custodians and the government and may include incentives.

According to the South African National Biodiversity Institute (SANBI), the stewardship programme being rolled out in South Africa presently is underpinned by the following features and approach:

- It is a voluntary commitment between landowners/users and government conservation agencies (and possibly conservation NGOs in the absence of well capacitated agencies in some provinces).
- It is located on privately/communally owned/used land. Most agreements to date are with private landowners who don’t live solely off the income they generate from the land.
- Landowners/users are custodians of the land and as such will continue to be the key users and managers of the land.
- Legally binding agreements should only be developed on sites of high biodiversity value.
- The higher the biodiversity importance of the site the stronger should be the legally binding nature of the agreement.

The key advantages of biodiversity stewardship are that:

- it provides a cost effective conservation mechanism for expanding protection of important biodiversity areas without removing land from agriculture and other forms of production.
- It contributes to national targets for protecting threatened ecosystems, maintaining the diversity and integrity of natural systems and landscapes, and the provision of vital ecosystem goods and services.
- It provides political, social, economic and environmental benefits.

**NORTH WEST LAND ADMINISTRATION ACT**

The purpose of the act is to provide for the acquisition and disposal of land by the North West Provincial Government and for matters incidental thereto.
“PREAMBLE
It is reasonably necessary for, or is incidental to, the effective exercise of its powers concerning certain matters listed in Schedule 4 to the Constitution that immovable property be acquired by the North West Provincial Government, or that immovable property be disposed of by the said Government;

The North West Province is the repository of legislative powers incidental to the powers vested in it in terms of Schedule 5 of the Constitution;

The implementation of national or provincial legislation by the North West Provincial Government may require that immovable property be so acquired or disposed of:"

The Act provides for the acquisition and disposal and management of land owned by the North West Provincial Government.

The Definitions for the acquisition and disposal of Provincial state land is as follows:

**Acquire:**
"acquire includes the purchase, expropriation, exchange, receipt through donation or leasing of immovable property, the conclusion of any form of land availability agreement in respect of immovable property and the registration of a real personal right in respect of immovable property in favour of the North West Provincial Government and "acquisition" has a corresponding meaning;"

**Dispose:**
"dispose includes the sale, exchange, donation or letting of provincial state land (including the allocation of provincial state land free of charge for a period of time), the conclusion of any form of land availability agreement in respect of immovable property with any person and the registration of any real or personal right in respect of provincial state land, and "disposal" has a corresponding meaning;"

It is important to note that immovable property includes any right in or over immovable property;

Provincial State Land can be defined as follows:

"provincial state land means any immovable property which vests in the North West Provincia Government in accordance with the provisions of section 239(1) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) and Item 28(1) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), together with any immovable property acquired by the Provincial Government pursuant to this Act;"

The act provides that all land rights holders should be consulted and appropriate notices be served on occupants before any land or immovable property can be disposed. This is particularly important in the case of land under land claims, occupied by communities, needed for housing development related to mines, or any other developments or where land in conservation areas need to be disposed to land claimants, concessionaires etc.

**SPATIAL PLANNING AND LAND USE MANAGEMENT BILL**

The proposed new legislation that was supposed to be enacted into Law by June 2012 in terms of a constitutional Court judgement is unfortunately still not enacted and leaves a serious gap in the planning legislation.
In June 2010 the Constitutional Court found Chapters 5 and 6 of the Development Facilitation Act unconstitutional. It provided a two year suspension of the declaration of invalidity, until June 2012, to remedy this situation. Thus the Development Facilitation Act would be replaced in its entirety by the Spatial Planning and Land Use Management Act.

The purpose of the new legislation currently still a Bill would be to:

“To provide a framework for spatial planning and land use management in the Republic; to specify the relationship between the spatial planning and the land use management system and other kinds of planning; to provide for the inclusive, developmental, equitable and efficient spatial planning at the different spheres of government; to provide a framework for the monitoring, coordination and review of the spatial planning and land use management system; to provide a framework for policies, principles, norms and standards for spatial development planning and land use management; to address past spatial and regulatory imbalances; to promote greater consistency and uniformity in the application procedures and decision-making by authorities responsible for land use decisions and development applications; to provide for the establishment, functions and operations of Municipal Planning Tribunals; to provide for the facilitation and enforcement of land use and development measures; and to provide for matters connected therewith.”

The preamble of the Bill is quoted for ease of reference, from this it is clear that it intends to address many of the problems caused by our country’s historic past as well as current problems experienced in land use management and planning.

“PREAMBLE
WHEREAS many people in South Africa continue to live and work in places defined and influenced by past spatial planning and land use laws and practices which were based on—racial inequality;
AND WHEREAS the State must respect, protect, promote and fulfil the social, economic and environmental rights of everyone and strive to meet the basic needs of previously disadvantaged communities;
AND WHEREAS sustainable development of land requires the integration of social, economic and environmental considerations in both forward planning and ongoing land use management to ensure that development of land serves present and future generations;
AND WHEREAS regional planning and development, urban and rural development and housing are functional areas of concurrent national and provincial legislative competence;
AND WHEREAS provincial planning is within the functional areas of exclusive provincial legislative competence, and municipal planning is primarily the executive function of the local sphere of government;
AND WHEREAS municipalities must participate in national and provincial development programmes;
AND WHEREAS it is necessary that—
a uniform, recognisable and comprehensive system of spatial planning and land use management be established throughout the Republic to maintain economic unity, equal opportunity and equal access to government services;
the system of spatial planning and land use management promotes social and economic inclusion;
principles, policies, directives and national norms and standards required to achieve important urban, rural, municipal, provincial, regional and national development goals and objectives through spatial planning and land use management be established; and
procedures and institutions to facilitate and promote cooperative government and intergovernmental relations in respect of spatial development planning and land use management systems be developed,”

In terms of schedule 1 of the proposed new legislation Provincial Governments and
Legislatures will also be obliged to address spatial planning and land use management issues through the promulgation of applicable provincial legislation.

These issues will include:

“Provincial legislation regulating land development, land use management, township establishment, spatial planning, subdivision of land, consolidation of land, the removal of restrictions and other matters related to provincial planning and municipal planning”

In terms of schedule 2 of the proposed Act the following land uses or land use purposes will be regulated:

- Agricultural purposes;
- business purposes;
- commercial purposes;
- community purposes;
- conservation purposes;
- educational purposes;
- government purposes;
- industrial purposes;
- institutional purposes;
- mining purposes;
- public purposes;
- recreational purposes;
- residential purposes;
- transport purposes; and
- any other purpose as may be prescribed.

In terms of schedule 3 the following legislation will be repealed when the Act is promulgated:

<table>
<thead>
<tr>
<th>No. and year of law</th>
<th>Short title</th>
<th>Extent of repeal</th>
</tr>
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<tbody>
<tr>
<td>Act No. 84 of 1967</td>
<td>Removal of Restrictions Act</td>
<td>The whole</td>
</tr>
<tr>
<td>Act No. 88 of 1967</td>
<td>Physical Planning Act</td>
<td>The whole</td>
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<tr>
<td>Act No. 125 of 1991</td>
<td>Physical Planning Act</td>
<td>The whole</td>
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<tr>
<td>Act No. 67 of 1995</td>
<td>Development Facilitation Act</td>
<td>The whole</td>
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MEMORANDUM ON THE OBJECTS OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT BILL, 2012

1. BACKGROUND

1.1 The planning system which exists in South Africa today (laws, policies, institutions and practices) has been shaped by many different governments, each responding to the problems which they defined as the most significant of the day. South Africa still operates with fragmented, unequal and incoherent spatial planning and land use management systems, which often stifles land and economic development and the transformation of apartheid-based settlement patterns.

1.2 The Development Facilitation Act, 1995 (Act No. 67 of 1995) (the DFA), was passed as an interim measure to facilitate the establishment of an integrated system. It did not repeal existing laws. As a result, parallel and complex systems of land development continue to operate.

1.3 In 1997 the government appointed the Development and Planning Commission to, amongst other things, advise on how best to streamline the various policy, legislative and regulatory frameworks. In 1999, after extensive national consultations, the Commission produced the Green Paper on Development and Planning.
1.4 Cabinet approved the White Paper on Spatial Planning and Land Use Management in June 2001. It was published in Gazette No. 22473 of 20 July 2001, together with a Draft Land Use Management Bill. The White Paper provides for rationalisation of the existing planning laws into one national system.

1.5 On 5 June 2007 the Cabinet Committee on Governance and Administration considered and raised some concerns regarding the Draft Land Use Management Bill. On 13 June 2007 the Cabinet approved the recommendations of the Committee on Governance and Administration on the Draft Land Use Management Bill.

1.6 These concerns were addressed by the Department of Land Affairs, leading to the presentation of the revised Draft Land Use Management Bill to the Cabinet during 2008.

1.7 The Land Use Management Bill, 2008, was again officially introduced to the public with a call for comments by the publication of an explanatory summary in Gazette No. 30979 of 15 April 2008. Though the Bill went through parliamentary processes in 2008, it was not passed into law.

1.8 Constitutionality of the DFA

In the City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal & Others (CCT 89/09 [2010] ZACC 11; 2010 (6) SA 182 (CC); 2010(9) BCLR 859 (CC) (18 June 2010) the constitutionality of the DFA was considered.

1.8.1 This matter arose from a dispute between the City of Johannesburg Metropolitan Municipality and the Gauteng Development Tribunal (the Tribunal), a provincial organ created by the DFA. The DFA empowers the Tribunal to approve applications for the rezoning of land and the establishment of townships, whereas the Gauteng Town-Planning and Townships Ordinance (15 of 1986) empowers the City to make a determination on the same subject matter. Aggrieved by this situation, the City instituted an application in the South Gauteng High Court, Johannesburg, challenging the constitutional validity of the DFA and seeking a review of two of the Tribunal’s decisions. The High Court dismissed the application and the City appealed to the Supreme Court of Appeal (the SCA), which held that the relevant chapters of the DFA were invalid and dismissed the appeal relating to the claims for review.

1.8.2 The City appealed to the Constitutional Court. The primary issue for determination was whether the Constitution of the Republic of South Africa, 1996 (the Constitution), empowers the local or the provincial sphere of government, or both, to exercise powers relating to the rezoning of land and the establishment of townships.

1.8.3 The Constitutional Court decided on 18 June 2010 that the Constitution envisages a degree of autonomy for the local sphere of government, in which municipalities exercise their original constitutional powers free from undue interference from the other spheres of government. The Court endorsed the SCA’s finding that “planning” in the context of municipal affairs has assumed a particular, well-established meaning which includes the zoning of land and the establishment of townships. Therefore, the Court held that the powers to consider and approve applications for the rezoning of land and the establishment of townships are elements of “municipal planning”, an exclusive municipal function assigned to municipalities by section 156(1) of the Constitution, read with Part B of Schedule 4. Consequently, Chapters V and VI of the DFA were found to be constitutionally invalid as they assign exclusive municipal powers to organs of the provincial sphere of government.

1.8.4 The judgment of the Court is significant for the following reasons:

The order of invalidity of Chapters V and VI of the DFA has been suspended for 24 months from the date of the judgment (18 June 2010). A definite and critical timeline therefore had to be established for the Spatial Planning and Land Use Management Bill (the Bill) to be enacted, i.e. by 17 June 2012. The Constitutional Court found that municipal planning includes the powers and functions necessary to determine rezoning and township establishment applications, and concluded that municipal planning is the exclusive competence of municipal government.
While not providing specific definitions for the concepts, the court also found that “provincial planning,” “regional planning” and “urban and rural development” were to be narrowly defined, so that the manner of their interpretation would not limit the powers and functions of municipalities in respect of municipal planning. These findings have implications for the institutions and structures created by the Bill, as well as their composition, legal status and powers and functions.

2. FORMULATION OF THE PROBLEM
2.1 The pre-1994 settlement patterns, which resulted in uneven land allocation and service levels, segregation, extreme poverty and dependence, found accommodation in many planning laws at all levels of government. While the DFA represents a significant attempt at addressing these unacceptable settlement patterns, this piece of legislation did not repeal the pre-1994 pieces of legislation on planning. The net effect is that many pre-1994 planning laws remain in operation.

2.2 This regulatory framework has a direct impact on the country in the following ways:
Economically: it impedes investment in land development and fails to establish sufficient certainty in the land market;
Spatially: it fails to address the segregated and unequal spatial patterns inherited from apartheid; and
Environmentally: it does not balance the country’s socio-economic needs with those of environmental conservation.

2.3 The continued operation of these multiple pieces of planning laws renders the entire planning system inefficient, costly and confusing, and therefore does not support a number of objectives of the government.

3. DISCUSSION OF ALTERNATIVES
There is sufficient consensus that the South African spatial pattern is discriminatory, inefficient, costly and puts a considerable burden on public resources, and that this legacy must be addressed.

4. MOTIVATION
4.1 South Africa’s cities, towns and settlements need to be restructured to reflect the priorities and principles of the democratic government. The restructuring of the settlement structure and patterns is crucial for sustainable, efficient, equitable and effective service delivery. It is a precondition for maximising the use of scarce resources.

4.2 The Bill seeks to bridge the racial divide in spatial terms and to transform the settlement patterns of this country in a manner that gives effect to the key constitutional provisions.

4.3 The Bill provides for municipalities to play their developmental role effectively through the application of directive principles, land use schemes in decision-making with regard to land use and land development, and stipulates that municipalities be the primary land use regulators.

4.4 The provisions of this Bill support the environmental legislation, and other laws applicable to the municipal sphere.

5. OBJECTS OF THE BILL
5.1 The objects of the Bill are to—
provide for a uniform, effective and comprehensive system of spatial planning and land use management for the Republic;
ensure that the system of spatial planning and land use management promotes social and economic inclusion;
provide for development principles and norms and standards;
provide for the sustainable and efficient use of land;
provide for cooperative government and intergovernmental relations amongst the
national, provincial and local spheres of government; and redress the imbalances of the past and ensure that there is equity in the application of spatial development planning and land use management.

6. SUMMARY OF CONTENT OF THE BILL
The Bill is divided into seven chapters. They are as follows:

6.1 Chapter 1
Clauses 1 to 5 provide for definitions, the application of the Act, objects of the Act, an outline of the system of planning in South Africa and the categories of spatial planning.

6.2 Chapter 2
Clauses 6 to 8 provide an outline of key principles that are applicable to the spatial planning system and will also guide land development in general. It provides scope for the Minister of Rural Development and Land Reform (the Minister) to develop more comprehensive principles. The chapter also provides for the Minister to set out compulsory norms and standards for land use management.

6.3 Chapter 3
Clauses 9 to 11 outlines the mandates of national and provincial spheres in monitoring and support provision to ensure effective spatial planning and land use management processes. It also provides for a differentiated approach to municipalities.

6.4 Chapter 4
Clauses 12 to 22 provide for the preparation and contents of national, provincial, regional and municipal spatial development frameworks, as well as the status of spatial development frameworks.

6.5 Chapter 5
Clauses 23 to 32 provide for the adoption of municipal land use schemes, including their purpose, content, status, review and relationship with existing land use schemes. The section also provides for the amendment of land use schemes and the alignment of authorisations in terms of other applicable legislation.

6.6 Chapter 6
Clauses 33 to 52 provide for the establishment, composition, powers and functions of Municipal Planning Tribunals, as well as for internal appeals against the decisions of Municipal Planning Tribunals. It also deals with possible municipal cooperation in adopting land use schemes and joint consideration of development applications that affect the national interest.

6.7 Chapter 7
Clauses 53 to 61 contain general provisions relating to commencement of registration of ownership, regulations, powers of the Minister to grant exemptions from provisions of the Act, delegations by the Minister, Premiers and municipalities to officials, non-impediment of function, offences and penalties, repeal of legislation, transitional provisions, and short title and commencement.

7. CONSULTATION
7.1 The Department of Rural Development and Land Reform (the Department) has worked closely with The Presidency (National Planning Commission) in finalising the Bill to ensure that it has addressed the various challenges in current systems. Other departments, including the Departments of Cooperative Governance, Human Settlements, Economic Development, Transport, National Treasury, and the other two spheres of government, including the South African Local Government Association (SALGA) and the South African Cities Network (SACN), have been involved in the process leading to the development of this Bill.

7.2 The Bill was presented to the Forum of Directors-General on 6 April 2011, the Cabinet Committee on Economic Sector, Employment and Infrastructure Development on 13 April 2011 and the Cabinet on 20 April 2011. The Cabinet
approved the publication of the Bill for public comment on 20 April 2011 and directed that a Regulatory Impact Assessment be conducted on the Bill during the consultation phase.

7.3 The Bill was published in Gazette No. 34270 on 6 May 2011. In response to this call for participation in the process, more than 100 written submissions were received.

7.4 A Regulatory Impact Assessment (the RIA) of the Bill was concluded in July 2011.

7.5 In addition to the public consultation, the Department engaged in an extensive consultation process with key stakeholders. Bilateral meetings and workshops were held with key public and private sector stakeholders, including national and provincial government departments; local, district and metropolitan municipalities; statutory bodies such as the National House of Traditional Leaders, SALGA and NEDLAC; professional bodies such as the South African Council for Planners; and private sector bodies such as the South African Property Owners Association and the Development Bank of South Africa. Consultation with key stakeholders is still ongoing.

IMPLICATION FOR PROVINCES
The Bill provides for the uniform regulation of land use management in the Republic, and the provisions thereof will affect all three spheres of government. Provinces will still have the competence to legislate on those functional areas mentioned in Schedule 5 to the Constitution. Capacity will also have to be augmented in some provinces to ensure that they are able to implement their mandates as outlined in the Bill.

NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT 57 OF 2003

The aim of the National Environmental Management: Protected Areas Act 57 of 2003 (NEM:PAA) is to provide for the protection and conservation of ecologically viable areas representative of South Africa’s biological diversity, natural landscapes and seascapes. In 2004, the National Environmental Management: Protected Areas Amendment Act No. 31 of 2004 was promulgated to amend NEM:PAA with regard to the application of that Act to national parks and marine protected areas. The amendment Act also repeals the National Parks Act 57 of 1976 with the exception of section 2(1) and Schedule 1.

The objectives of NEM:PAA are:

- to provide, within the framework of national legislation, including NEMA, for the declaration and management of protected areas;
- to provide for co-operative governance in the declaration and management of protected areas;
- to effect a national system of protected areas in South Africa as part of a strategy to manage and conserve biodiversity;
- to provide for a representative network of protected areas on state land, private land and communal land;
- to promote sustainable utilisation of protected areas for the benefit of people in a manner that would preserve the ecological character of such areas;
- to promote participation of local communities in the management of protected areas, where appropriate; and
- to provide for the continued existence of South African National Parks.

The purposes of the declaration of protected areas are:

- to protect ecologically viable areas representative of South Africa’s biological diversity and its natural landscapes and seascapes in a system of protected areas;
- to preserve the ecological integrity of those areas;
- to conserve biodiversity in those areas;
• to protect areas representative of all ecosystems, habitats and species naturally occurring in South Africa;
• to protect South Africa’s threatened or rare species;
• to protect an area which is vulnerable or ecologically sensitive;
• to assist in ensuring the sustained supply of environmental goods and services;
• to provide for the sustainable use of natural and biological resources;
• to create or augment destinations for nature-based tourism;
• to manage the interrelationship between natural environmental biodiversity, human settlement and economic development;
• generally, to contribute to human, social, cultural, spiritual and economic development; or
• to rehabilitate and restore degraded ecosystems and promote the recovery of endangered and vulnerable species.

The Minister may by notice declare an area to be a special nature reserve:
• to protect highly sensitive, outstanding ecosystems, species or geological or physical features in the area; and
• to make the area primarily available for scientific research or environmental monitoring.

A notice declaring a special nature reserve on private land may be issued if the owner has consented thereto by written agreement with the Minister. Any such agreements are binding on the successors in title to the landowner, and the terms thereof must be registered against the title deeds of the land. Please note that this provision does not appear to be a limitation on the power of the Minister to declare a special nature reserve on private land, but simply a permissive provision that permits declaration inter alia with the written consent of the private landowner.

The Minister may by notice declare an area to be a national park:
• to protect the area if the area is of national or international biodiversity importance or is or contains a viable, representative sample of South Africa’s natural systems, scenic areas or cultural heritage sites;
• to protect the ecological integrity of one or more ecosystems in the area;
• to prevent exploitation or occupation inconsistent with the protection of the ecological integrity of the area;
• to provide spiritual, scientific, educational, recreational and tourism opportunities which are environmentally compatible; and
• to contribute to economic development, where feasible.

A notice declaring a national park on private land may be issued if the owner of the land has consented to the declaration by way of a written agreement with the Minister or South African National Parks.

The Minister or the MEC may by notice declare an area to be a nature reserve:
• to protect the area, if the area:
  o has significant natural features or biodiversity;
  o is of scientific, cultural, historical or archaeological interest; or
  o is in need of long-term protection for the maintenance of its biodiversity or for the provision of environmental goods and services;
• to provide for a sustainable flow of natural products and services to meet the needs of a local community;
• to enable the continuation of such traditional consumptive uses as are sustainable; or
• to provide for nature-based recreation and tourism opportunities.
A notice declaring a nature reserve on private land may be issued if the owner has consented thereto by written agreement with the Minister of MEC. Any such agreements are binding on the successors in title to the landowner, and the terms thereof must be registered against the title deeds of the land.

The Minister or the MEC may by notice declare an area to be a protected environment:

- to regulate the area as a buffer zone for the protection of a special nature reserve, world heritage site or nature reserve;
- to enable owners of land to take collective action to conserve biodiversity on their land and to seek legal recognition therefore;
- to protect the area if the area is sensitive to development due to its:
  - biological diversity;
  - natural characteristics;
  - scientific, cultural, historical, archaeological or geological value;
  - scenic and landscape value; or
  - provision of environmental goods and services;
- to protect a specific ecosystem outside of a special nature reserve, world heritage site or nature reserve;
- to ensure that the use of natural resources in the area is sustainable; or
- to control change in land use in the area if the area is earmarked for declaration as, or inclusion in, a nature reserve.

A private landowner may request or consent to the declaration of his/her land as a protected environment and the Minister or MEC may withdraw the declaration as a protected environment.

A protected area which, immediately before NEM:PAA took effect, was reserved or protected in terms of provincial legislation for any purpose for which an area could in terms of NEM:PAA be declared as a nature reserve or protected environment, must be regarded to be a nature reserve or protected environment for the purpose of NEM:PAA.

**NORTH WEST PARKS BOARD ACT, ACT 3 OF 1997**

The North West Parks and Tourism Board Act, Act 3 of 1997 was drafted to provide strict guidance on how to establish the North West Park and Tourism Board as well as how the board should be operated and managed to manage protected areas and to promote and facilitate the development of tourism in the province and to provide for the matters incidental thereto.

The act identified 5 objectives of the board in Section 2 (2) which are:

- To ensure the establishment, development and efficient management of a network of formally protected areas in order to conserve indigenous biodiversity representative samples of natural ecosystems and habitats of critical important or threatened species.
- To facilitate the development, co-ordination and promotion of tourism in the Province,
- To encourage person to visit the province from elsewhere and to travel about within the province
- To encourage and promote the development and improvement of travel services and facilities to and within the province, for which purpose the board may liaise with any department of the province; and
- To encourage the inhabitants of the Province to travel about therein.

The sections set out in the act cover all details regarding the way in which the board is supposed to function, their responsibilities as well as liabilities, the financial management of the board, the appointment and management of employee as well as their ability to convict
any person that is in contravention with his or her duties and any part of this act. The main components of the act deals with the composition of the North West Parks and Tourism Board of directors and the board’s related administrative and financial affairs, as well as its legal mandate and associated powers, regulations and penalties. Of specific relevance is its responsibilities related to the establishment and management of Protected Areas and the limitations on prospecting and mining in a protected area.

**TRANSVAAL NATURE CONSERVATION ORDINANCE 12 OF 1983**

The Transvaal Nature Conservation Ordinance 12 of 1983 (TNCO) applies to both Gauteng and the North West provinces and seeks to protect wild animals, fisheries, indigenous plant and endangered and rare species of fauna and flora. In the event that certain activities will impact on the abovementioned species then authorisations will have to be obtained prior to conducting the activity. At the outset, it must be noted that the TNCO does not bind organs of the State.

The TNCO provides schedules of wild animal species that are classified as protected game, specially protected game, ordinary game, protected wild animals. There are a number of activities that are either prohibited or require authorisation.

Any person who carries on a business or follows an occupation having the effect that any substance or thing, whether solid, liquid or gaseous, is used or produced which is likely to be or become injurious to fish or fish food, and does not take the necessary steps to prevent such substance or thing from entering or percolating into waters in which there is fish and/or deposits any substance or thing contemplated above into waters in which there is fish or causes or allows it to enter or percolate therein, shall be guilty of an offence and liable on conviction to a fine not exceeding R2,000 or to imprisonment for a period not exceeding 24 months or to both such fine and such imprisonment and may be fined to a further amount not exceeding R500 for every day the offence continues.

Subject to the provisions of the TNCO a person may, upon application and payment of the prescribed fees, be issued with a licence, permit or exemption which shall be valid for the period referred to therein. A licence, permit or exemption shall be subject to such conditions as may be prescribed and as the relevant authorities may deem fit to impose in any particular case.

**MINERAL & PETROLEUM RESOURCES DEVELOPMENT ACT, 2004**

In 2004, The Minerals and Petroleum Resources Development Act (MPRDA) was circulated and in 2005 the Act became law. The Act recognizes the states’ control over the country’s mineral resources and provides for equitable access to mineral resources, opportunities for historically disadvantaged South Africans (HDSAs), economic growth, employment and socio-economic welfare, security of tenure and that holders of rights contribute towards the socio-economic development of the area in which they operate.

The Act was created in order to help the participation of HDSAs in the mining sector which has been guided by the Broad-based Socio-economic Empowerment Mining Charter (2010), and seeks to expand opportunities for HDSAs to enter the mining industry. The requirement is to implement actions in 9 score card areas (ownership, procurement and enterprise development, beneficiation, employment equity, human resources development, mine community development, housing and living conditions, sustainable development and growth of the mining industry and reporting (monitoring and evaluation)) attaining specified targets on a 5-year rolling basis.
The Act also requires the development of Social and Labour Plans (SLPs) which are a social contract between government, the mining company and the community to assist in addressing the social and economic impacts that operations have on surrounding communities. The plans cover human resources development, local economic development, closure and retrenchment management, financial provisions and a statement of undertaking. SLPs progress is reported regularly to the Department of Labour.

LAND CLAIMS ACT

Sec 25(7) of Constitution
A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled to the extent provided by an Act of Parliament either to restitution of that property or to equitable redress

Restitution of Land Rights Act – Act 22 of 1994

- Assented to 17 November 1994
- Purpose of Act:
  - To provide for the restitution of rights in land to persons dispossessed of such rights after 19 June 1913 as a result of past racially discriminatory laws or practices; to establish a Commission on Restitution of Land Rights and a Land Claims Court; and to provide for matters connected therewith.

COMMUNAL PROPERTY ASSOCIATIONS ACT (CPA)

The purpose of the Communal Property Associations Act 28 Of 1996 is to enable communities to form juristic persons, to be known as communal property associations in order to acquire, hold and manage property on a basis agreed to by members of a community in terms of a written constitution; and to provide for matters connected therewith.

WHEREAS it is desirable that disadvantaged communities should be able to establish appropriate legal institutions through which they may acquire, hold and manage property in common;
AND WHEREAS it is necessary to ensure that such institutions are established and managed in a manner which is non-discriminatory, equitable and democratic and that such institutions be accountable to their members;
AND WHEREAS it is necessary to ensure that members of such institutions are protected against abuse of power by other members.
APPENDIX D: REVIEW OF POLICY DOCUMENTS

KING REPORT

The King Code and Report on Governance for South Africa (King III, September 2009) is the code of corporate governance for companies in South Africa. It is a structured approach for leaders to reflect on the role of the organisation in society (i.e. impact on the economy, society and the environment) and provide effective and recognised governance and improved reporting, assurance and oversight. It requires integrated reporting which facilitates exchange with stakeholders and leads to improved communication, greater stakeholder buy in, and a clear process for project prioritisation. The Code adopts the Companies Act, No. 71 of 2008, and is mandatory for all JSE listed companies.

Social transformation and redress is important and needs to be integrated with in the broader transition to sustainability. Integrating sustainability and social transformation in a strategic and coherent manner will give rise to greater opportunities, efficiencies, and benefits, for both the company and society.

NATIONAL GROWTH PATH

Description

The role of the new Growth Path is to provide strategies to create jobs in South Africa as well as to lay out a dynamic vision on how to mutually achieve a more developed, democratic, interconnected and equitable economy and society over a medium term by means of sustained growth.

Background

Employment creation is one of the South Africa top priorities, due to the country’s high poverty rate. The National Growth Path was established to assist government with a strategy on how to address this sensitive issue, by developing a policy package to facilitate employment creation, and by providing a summary of the work done as far.

Contents Relevant to the Study

Four strategies have been identified by the International Labour Organization (ILO):
- Employment and income opportunities,
- Fundamental principles and rights at work and international labour standards (essentially organisational rights and freedom from coercion and discrimination),
- Social protection (which includes decent working conditions) and social security, and
- Social dialogue and tripartism.

The main economic sectors identified which will be prioritised to support job creation are:
- Mining
- Tourism
- Agriculture
- Infrastructure
- Green Economy
- Manufacturing.

The following practical measures are set at sectoral level
• **Restructuring land reform** to support smallholder schemes with comprehensive support around infrastructure, marketing, finance, extension services, etc.; upgrading employment in commercial agriculture especially through improved worker voice; measures to support growth in commercial farming and to help address price fluctuations in maize and wheat while supporting national food security; acceleration of land claims processes and better support to new farmers following land-claim settlements; programmes to ensure competitive pricing of inputs, especially fertiliser; and support for fishing and aquaculture.

• **Accelerating exploitation of mineral reserves** by ensuring an effective review of the minerals rights regime, lowering the cost of critical inputs including logistics and skills in order to stimulate private investment in the mining sector, and setting up a state-owned mining company that would co-exist with a strong private mining sector and that promotes beneficiation, as well as greater utilisation of the mineral resource base of the country for developmental purposes, including potentially through a sovereign wealth fund.

• **Refocusing the beneficiation strategy** to support fabrication (stage 4) (rather than only smelting and refining, which are both capital and energy intensive), including stronger measures to address uncompetitive pricing of intermediate inputs, such as where appropriate, export taxes on selected mineral products linked to clear industrial strategies.

• **Phasing support for manufacturing** to encourage activities that can generate employment on a large scale and meet basic needs at lower cost in the short to medium term, while sustaining development of more knowledge-intensive industries for long-run growth. A number of the required actions have been set out in IPAP2.

• **In tourism**, strengthening measures to expand the tourism infrastructure and services, promote targeted marketing campaigns, manage costs, quality assurance and logistics, improve training and identify employment and entrepreneurial opportunities for the youth; in business services such as finance and communications, enhancing support measures to encourage diversification; and developing a comprehensive programme to support cultural industries. In addition, the conditions of vulnerable workers in the services will be addressed.

A development policy package for the growth, decent work and equity to assist in achieving the desired target include the following packages to assist the goals of the NGP.

• **The Microeconomic package**

• **The microeconomic package**
  o Active industrial policy
  o Rural development policy – to improve livelihoods and employment
  o Competition policy
  o Stepping up education and skills development
  o Enterprise development
  o BBBEE
  o Labour policies
  o Technology policy
  o Development trade policies
  o Policy for Africa development

• **A package of social partner commitments**

• **Resource drivers**

• **Institutional drivers**

• **Implications for provinces and localities:** the spatial dimension of the growth path-government will create a spatial perspective on long-term settlement patterns and opportunities for employment creation and economic development.
Concluding Remarks

This document does not specifically talk about land claims, resolutions or restitutions in relation to any sector other than agriculture. It does however identify mining and tourism as part of the main sectors in South Africa that are of importance in fighting the high poverty levels.

NATIONAL DEVELOPMENT PLAN– VISION 2030 (NDP 2030)

Vision

The National Development plan – Vision 2030 (NDP 2030) was developed by the National Planning Commission. The plan proposes the following vision:

- Creating new jobs and livelihoods
- Expanding infrastructure
- Transition to low-carbon economy
- Transforming urban and rural spaces
- Improving education and training
- Providing quality health care
- Building a capable state
- Fighting corruption and enhancing accountability
- Transforming society and uniting the nation.

The short term vision for South Africa and its people, aimed at 2030, is to have access to affordable services and quality environments. Targeted investments for rural areas as well as an institutional reform will assist in the revival of the rural areas of South Africa on the way to 2050.

The long term vision towards 2050 includes objectives such as resilient planning systems, productive farms, well managed villages, towns and cities, well maintained infrastructure, energy efficient homes, secure food and water supply, people reclaiming the streets and thus the breakdown of security barriers in suburbs, etc.

It is foreseen that the vision is achievable through government building on past experiences and working proactively with the people of South Africa to assist them in building a sustainable living environment for all citizens.

Five main challenges came out of the Commission’s diagnostic report:

- Dysfunctional settlement patterns across the country
- Challenges facing towns and cities
- Uncertain prospects in rural areas
- Challenges in providing housing and basic services and reactivating communities
- Weak spatial planning and governance capabilities.

Chapter Eight: Transforming Human Settlements

Chapter Eight of the NDP deals specifically with transforming human settlements and the associated spatial landscape, intending to address the challenges of apartheid geography and to create conditions for more humane environmentally sustainable work and living environments.

Despite the necessary shift away from rural towards urban settlements, the population will remain dependant on rural goods and services for their health and well-being.
This chapter’s main focus is on the spatial aspects of rural development, which links to critical issues such as land tenure reform, institutional development, non-agricultural employment and resource rights. Each of the latter needs to be addressed in a comprehensive programme to restore rural areas, that clearly outlines the roles of the state and the local government as well as capacity requirements.

Five spatial issues were identified that needs to be addressed in the development of the rural areas of South Africa, one of the issues directly relating to our study is die spatial conflict in rural areas issue which states that in future scarce resources will result in more acute conflicts, with tourism, agriculture, mining and biodiversity in conflict over access to land and water. The implementation of new agricultural development proposals will result in the role of traditional authorities being scrutinised and that mechanisms need to be found to resolve these challenges.

Municipal spatial planning is usually not properly linked to investment decisions with regards bulk infrastructure provisions and growth management strategies need to be adopted that prioritise areas where growth is desired.

Another issue is the issue of weak spatial planning and the limited capability of government. The legislation that regulates land use management is unreformed and dates back to apartheid which lacks the guidance of a national spatial development framework, due to the fact that provincial land-use management functions overlap with those of local municipalities. This creates confusion and conflict. Provinces are responsible for overseeing the key economic activities, such as agriculture, tourism and environmental management. Due to a lack in provincial capacity, development is often delayed and the quality of the provincial growth and development strategy which is supposed to act as an instrument for coordination, is reduced.

Development of a National Spatial Development Framework (NSF) is proposed. To support the NSF, certain considerations need to be made; one of which is the establishment of an interdepartmental spatial coordination committee in the presidency with the necessary oversight to:

- Formulate the SDF
- Resolve responsibilities for spatial planning
- Resolve a mediation process for serious spatial conflicts
- Creation of strong spatial indicators
- Convene the legislation of reform process by promoting spatial planning and land-use management legislative reform.

Certain steps were proposed to be undertaken in the next five years (2012-2017):

- Development of a more coherent and inclusive approach to land
- Radically revise the house finance regime
- Revise the regulations and incentives for housing and land use management
- Recognise the role played by informal settlement and enhance the existing national programme for informal settlement upgrading by developing a range of tailored responses to support their upgrade
- Support the transition of environmental sustainability
- Support Rural spatial development
- Guiding principles for provision of infrastructure in rural areas which include
  - Land reform programmes that reflect the importance of location and connectivity for farm viability
- Investigate and respond to the shifting of settlement patterns
- Small town development strategy
• Spatial interventions to support agricultural development
• Build an active citizenry to rebuild local place and community

Chapter Eight concludes by saying that spatial transformation is a long term project and not a quick fix. Although possible solutions are proposed, they should be supported by strong policies, consistent implementation and political will to succeed. Future generations will benefit if the trajectory of current patterns of development begins to change.

**NORTH WEST GROWTH & DEVELOPMENT STRATEGY**

**Description**

The Growth and Development Strategy of the North West Province is a framework for integrated and sustainable growth together with economic development for the province and its people. It contains a common vision, goals and objectives and indicates strategies on how to achieve these goals in a sustainable manner.

**Background**

The PGDS is the outcome of the Provincial Growth and Development summit that was held in 2004. The summit was attended by government and its social partners. The document is guided by the national and provincial review of the first ten years of democratic governance and the policy that has been identified for the following ten (10) years.

It describes the balanced development of economic sectors and spatial locations in accordance with the demands of the people and aims targeted investments that will provide opportunities to the poorly skilled, employment, and an improved lifestyle.

**Contents Relevant to the Study**

The strategy is to assist in the sustainable growth of the province and to achieve certain goals and target by focusing on specific sectors / pillars.

The strategy identified two main goals that need to be achieved:
• Economic Goal
• Poverty eradication goal.

The PGDS identified the following areas in which growth targets need to be set:
• Economic growth
• Basic needs
• Investment.

During the summit the following pillars were identified as the main platform for economic development in the province.
• Growth and Investment
• Agriculture and Rural Development
• Mining and Energy
• Tourism
• Manufacturing and Trade
• SMME
• Training and skills.

**Concluding Remarks**

This document indicates that the two competing land uses that are the subject of this study (Mining and Tourism) are recognised as main growth pillars of the provincial economy. It however does not address the issue of competing land uses and land claims.
The North West Spatial Development Framework discusses its Spatial Structuring Elements by means of three principles. The first principle is an analysis of the nodes and corridors within the Province, touching on the functionality and transport of the area. The second principle’s focus shifts to the people inhabiting these nodes and who makes use of the transport; discussing the minimum level of living and population densities. Principle three talks about the environment and space viz. protected areas, the sustainable growth and development framework, remaining natural habitats and critical biodiversity areas as well as ecological support areas. Albeit, each principle will be summarised for the purpose of analysing the Province in terms of spatial planning.

Recognised Corridors

The North West Spatial Development Framework does not discuss the corridors in much detail but argues that a selected few should be reinforced:
- The Platinum Corridor is focused on the North West portion of the East West Corridor that links Maputo in the East with Walvisbay in the West through Nelspruit-Pretoria-Rustenburg-Lobatse-Windhoek. (See the pink oval)
- The Treasure Corridor is strengthening developments from Johannesburg to Potchefstroom, Klerksdorp and further south along the N12 national road.
- The Western Corridor is intended to strengthen a North-South initiative from SADCC through Botswana southwards. This corridor simultaneously links the Platinum Corridor with the Treasure corridor through the Mafikeng airport and industrial zone and the Taung irrigation scheme and promoting the development and growth in between.
- Proposed new corridor from Potchefstroom through Ventersdorp, Coligny, Lichtenburg to Mafikeng to Botswana to promote North South interaction to markets and mobility.

LOCAL GOVERNMENT MUNICIPAL STRUCTURES ACT

- to provide for the establishment of municipalities in accordance with the requirements relating to categories and types of municipality;
- to establish criteria for determining the category of municipality to be established in an area;
- to define the types of municipality that may be established within each category;
- to provide for an appropriate of functions and powers between categories of municipality;
- to regulate the internal systems, structures and office-bearers of municipalities;
- to provide for appropriate electoral systems; and
- to provide for matters in connection therewith.

DEAT, INFRASTRUCTURE REVIEW IN SUPPORT OF INTERNATIONAL AND DOMESTIC TOURISM, MAY 2009

According to the Infrastructure Review In Support Of International and Domestic Tourism Report of May 1999, priority areas were identified for tourism infrastructure investment (PATII) for the whole of South Africa.

Destinations were identified throughout the country. The important destinations recognised
for the North West Province included Madikwe and Pilanesberg.

Tourism routes were also identified which linked gateways, staging posts, destinations and distribution points. It is believed that these destination are areas with a sustainable tourism product which either demonstrate demand or potential opportunity. The Johannesburg to Madikwe route via Sun City/Pilanesberg was identified as one of the nineteen important tourism routes in South Africa. Sun City and Madikwe were also identified as important distribution points.

It is clear from the Infrastructure review in support of international and domestic tourism report that the Magaliesberg region linking Gauteng with Madikwe via Sun City/Pilanesberg with the surrounding tourism attractions are seen as the main tourism attraction areas that are profitable and provide a sustainable tourism product, and forms an important link to all other tourism destinations in the Northwest Province.

WHITE PAPER ON THE DEVELOPMENT AND PROMOTION OF TOURISM (DEAT, MAY 1996)

The White Paper on the Development and Promotion of Tourism provides a policy framework and guidelines for tourism development in South Africa. The White Paper finds that South Africa’s resource base for tourism is magnificent and that the country is very attractive due to its diversity, which includes: accessible wildlife, varied and impressive scenery, unspoiled wilderness areas, diverse cultures, generally sunny and hot climate, no “jet lag” from Europe, a well-developed infrastructure and unlimited opportunities for special interest activities such as whale-watching, wild water rafting, hiking, bird-watching, bush survival, deep-sea fishing, hunting and diving. The country also has unique archaeological sites and battlefields, the availability of excellent conference and exhibition facilities, a wide range of sporting facilities, good communication and medical services, internationally known attractions e.g. Table Mountain and Sun City, and opportunities to visit regional internationally known attractions such as Victoria Falls.

The White Paper finds that tourism has become a very competitive business, and competitive advantage is no longer natural, but man-made, driven through science, technology and innovation. Thus, it is stated that South Africa’s competitiveness will not only depend on its natural resources, but how well they are managed and complemented with the man-made driven innovations. South Africa already has a well-established network of national parks and private nature reserves to satisfy the increasingly environmentally sensitive visitor needs. In addition, tourism companies are already leaders in global “best practice” in ecotourism, while others have created Disney-like attractions boosting South Africa’s name internationally. The successful political transformation has also opened the tourism potential to the rest of the world. The White Paper, however, finds that despite the advantages identified, South Africa has not been able to realise its full potential in the tourism industry. Therefore, the contribution of tourism to employment, small business development, income and foreign exchange earnings remains limited. In addition, the tourism industry in South Africa has been, and continues to be, faced with a number of impediments to its further growth and development. Key constraints facing the industry and preventing it from making a meaningful contribution to the economy, as well as immediate problems identified by the White Paper include the following:

- Tourism has been inadequately resourced and funded;
- Myopic private sector;
- Limited integration of local communities and previously neglected groups into tourism;
- Inadequate tourism education, training and awareness;
- Inadequate protection of the environment;
- Poor service;
• Lack of infrastructure, particularly in rural areas;
• A ground transportation sector not geared to service tourists;
• Lack of inclusive, effective national, provincial and local structures for the development, management and promotion of the tourism sector; and
• An immediate problem facing the industry is the growing levels of crime and violence on visitors.

According to the White Paper on Development and Promotion on Tourism, the tourism sector could provide the basis for and sustain the RDP programme of the South African government. However, unless tourism is viewed and developed as a strategically important industry, the greatest engine of growth for the South African economy, the true wealth-creating potential of the tourism sector will never be realised.

**MOU BETWEEN LAND AFFAIRS AND DEPARTMENT OF TOURISM**

**Description**

“On 9 February 2005 the Minister of Agriculture and Land Affairs and the Minister of Environmental Affairs and Tourism agreed to develop and conclude an Inter-ministerial Agreement to provide a mechanism by which to facilitate:

• a co-operative national approach to the resolution of land claims in Protected Areas;
• a definition of the roles of the Department of Land Affairs and the Department of Environmental Affairs and Tourism with regard to the restitution of rights in land within Protected Areas;
• the continued environmental protection for Protected Areas under land claims; and
• the optimum participation and beneficiation of claimants and broader communities in and around the Protected Areas”.

**Background**

Various disputes took place where claims were negotiated and needed to be settled in conservation areas. These disputes were due to conflicting mandates of Departments and the aspirations of land claimant communities. It was thus necessary for the two departments to put in place ground rules for the settlement of land claims in conservation areas that is acceptable for both departments and that would form the position of government in such cases. This was very important to ensure that conflict was not exacerbated by differences between government departments.

**Relevant Laws/Regulations**

The relevant legislation applicable is the Restitution of Land Rights Act, NEMPAA, NEMA and in the North West – The North West Parks and Tourism Board Act.

**NATIONAL CO-MANAGEMENT FRAMEWORK**

The framework was developed to provide for more effective redress of land rights in a fair and equitable manner to claimants and to provide for models of co-management

**Background**

Before this document was in place settlements of land claims in conservation areas took place without clear guidelines, policy and procedures. Benefits that should accrue to land claimants and models for co-management were also not available and caused conflict if communities were treated differently in the same and in different provinces. The guidelines provided in this document were a positive step forward toward achieving standardization and an equitable approach.
### APPENDIX E: REVIEW OF AGREEMENTS – SUCCESSES AND LESSONS LEARNT

## NATIONAL AGREEMENTS

<table>
<thead>
<tr>
<th>BACKGROUND &amp; DESCRIPTION</th>
<th>CONTENTS RELEVANT TO STUDY</th>
<th>SUCCESSES</th>
<th>LESSONS LEARNT</th>
</tr>
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<tbody>
<tr>
<td>National Departments MOU between Department of Land Affairs and Department of Tourism</td>
<td><strong>Background:</strong> Various disputes took place where claims were negotiated and needed to be settled in conservation areas. These disputes were due to conflicting mandates of Departments and the aspirations of land claimant communities. It was thus necessary for the two departments to put in place ground rules for the settlement of land claims in conservation areas that is acceptable for both departments and that would form the position of government in such cases. This was very important to ensure that conflict was not exacerbated by differences between government departments.</td>
<td>Land have been restored to claimants in both the reserves</td>
<td>It is important to ensure that all is well capacitated and comprehensive planning is done to before restoration take place – in the case of Madikwe the settlement agreement was not signed simultaneously with the co-management agreement – now some years later it is still not signed and is leading to tension and uncertainties between stakeholders</td>
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</table>

**Description:** "On 9 February 2005 the Minister of Agriculture and Land Affairs and the Minister of Environmental Affairs and Tourism agreed to develop and conclude an **Interministerial** Agreement to provide a mechanism by which to facilitate:

- a co-operative national approach to the resolution of land claims in Protected Areas."
### Background & Description

<table>
<thead>
<tr>
<th>Contents Relevant to Study</th>
<th>Successes</th>
<th>Lessons Learnt</th>
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</thead>
<tbody>
<tr>
<td>a definition of the roles of the Department of Land Affairs and the Department of Environmental Affairs and Tourism with regard to the restitution of rights in land within Protected Areas;</td>
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<tr>
<td>the continued environmental protection for Protected Areas under land claims; and</td>
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<tr>
<td>the optimum participation and beneficiation of claimants and broader communities in and around the Protected Areas”</td>
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### Provincial Agreements

#### Makuleke co-management Agreement between SANPARKS, DEAT, Department of Land Affairs, CPA & the Community

<p>| Background: A co-management agreement has been entered into between SANPARKS, DEAT, Department of Land Affairs, CPA &amp; the Community for co-management of Madikwe GR after been provided with title deed over the Pafuri Triangle land in Kruger National Park | The agreement has been successfully entered into and a co-management arrangements are in place | The Joint Management Board is in place, joint decision making, KNP contracted for 50 years to manage the land, tourism concession operating on land | Community interests were regarded as secondary to conservation during negotiations Transfer of skills kicked in too late Disrespect and conflict between parties initially The objectivity and technical correctness of the initial (top-down) planning process is questioned Inadequate community consultations |</p>
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<th><strong>BACKGROUND &amp; DESCRIPTION</strong></th>
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<th><strong>SUCCESSES</strong></th>
<th><strong>LESSONS LEARNT</strong></th>
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<tr>
<td><strong>Description:</strong> The agreement has been drafted but has not been signed as the CPA is not satisfied with the interpretation of some of the standard conditions</td>
<td></td>
<td></td>
<td>Conflicts of interest ignored</td>
</tr>
<tr>
<td><strong>Barokologadi/Madikwe co-management Agreement between NWPTB, DEAT, Department of Land Affairs and CPA</strong></td>
<td>The process of drafting the co-management agreement and the inability of the parties to finalise the details around implementation of the agreement highlighted some of the straining issues</td>
<td>The formal processes and guidelines have been followed and the agreement has been drafted in accordance therewith</td>
<td>The CPA expectations outstrip the NWPTB understanding of what is fair. NWPTB not provided with skills and resources commensurate with the responsibilities demanded by the process and the conditions of the pro-forma agreement</td>
</tr>
<tr>
<td><strong>Description:</strong> The agreement has been drafted but has not been signed as the CPA is not satisfied with the interpretation of some of the standard conditions</td>
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<tr>
<td><strong>MOU Heritage Park between the mines and the Communities</strong></td>
<td>The agreement was a compromise between two competing land uses, acting in the benefit of the host community, in that benefits from the land will be optimised in both the short and the long term. The short-term socio-economic benefits associated with mining will accrue to the community, whilst the tourism potential will be utilised in both the short and the long term as the mines agreed not to unduly sterilise land during operations or through inappropriate rehabilitation</td>
<td>The agreements were signed. Infrastructure development corridors were agreed to by all parties. Mines had representation on the Heritage Park Steering Committee. Regular meetings were held between the different stake holders. Infrastructure was initially developed in line with agreed plans.</td>
<td>The communication structures broke down. The conditions of the agreements are no longer rigidly managed.</td>
</tr>
<tr>
<td><strong>Background:</strong> An MOU was signed between the mines, the NWPTB and the baKgatla baKgafela after economical mining opportunities were identified north of Pilanesberg in the Heritage Park which was reserved for eco-tourism expansion</td>
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<tr>
<td>BACKGROUND &amp; DESCRIPTION</td>
<td>CONTENTS RELEVANT TO STUDY</td>
<td>SUCCESSES</td>
<td>LESSONS LEARNT</td>
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<tr>
<td>The other parties to optimise the short-term potential of mining and to plan and rehabilitate the land towards conservation and tourism as the long-term land use</td>
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</tbody>
</table>
### MUNICIPAL AGREEMENTS

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<tr>
<th>BACKGROUND &amp; DESCRIPTION</th>
<th>CONTENTS RELEVANT TO STUDY</th>
<th>SUCCESSES</th>
<th>LESSONS LEARNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint Management MOU between Bafokeng and Rustenburg LM for services.</td>
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<tr>
<td><strong>Background:</strong> The Royal baFokeng Administration had been largely self-sufficient regarding the delivery of municipal services prior to 1994.</td>
<td>The MOU between the parties provides a mechanism whereby two potentially opposing or competing parties could come to a win-win relationship that best serves the needs of the people most affected by them.</td>
<td>The agreement is in place and the parties continue to work together.</td>
<td>Where potentially competing or opposing parties agree to sit around a table and sincerely negotiate on behalf of the communities that they represent, it is likely that the best arrangement will be forthcoming</td>
</tr>
<tr>
<td><strong>Description:</strong> With the new dispensation in South Africa where all peri-urban land was allocated to municipalities, an MOU was entered into between the Rustenburg Local Municipality and the Royal baFokeng, whereby respective roles and responsibilities were agreed to in terms of the delivery of municipal services.</td>
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### LOCAL AGREEMENTS

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<tr>
<th>BACKGROUND &amp; DESCRIPTION</th>
<th>CONTENTS RELEVANT TO STUDY</th>
<th>SUCCESSES</th>
<th>LESSONS LEARNT</th>
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</thead>
<tbody>
<tr>
<td>Bakgatla development forum</td>
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<tr>
<td><strong>Background:</strong> As a result of the MOU between the mines, the baKgatla and the NWPTB agreeing to collaborate north of Pilanesberg, a development forum was established</td>
<td>The forum provided a neutral (apolitical) and highly skilled information sharing, planning and communication platform within which all development agencies and developers were grouped together.</td>
<td>The development forum initially successfully coordinated all development planning in the area. Development corridors and infrastructure were jointly planned and developed to maximise synergies, minimise negative short-</td>
<td>The communication structures broke down and the formal meetings fell away as a result of internal battles amongst the baKgatla Government agencies that participated did not maintain the good momentum</td>
</tr>
<tr>
<td>BACKGROUND &amp; DESCRIPTION</td>
<td>CONTENTS RELEVANT TO STUDY</td>
<td>SUCCESSES</td>
<td>LESSONS LEARNT</td>
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<tr>
<td><strong>Description:</strong> The development forum’s intention was to synchronise and coordinate all infrastructure planning and development in the area with participation by all stake holders</td>
<td>The focus of the meetings were focussed on development issues and ensuring the best synergies could be obtained by joining forces of all parties.</td>
<td>and long term impacts and maximise community benefits. The infrastructure optimally serviced the mines, the other developers in the area as well as the local communities</td>
<td>These forums need strong leadership and management. Responsibility of managing such forums should ideally not be headed by political leaders or government</td>
</tr>
<tr>
<td><strong>Heritage Park Steering Committee</strong></td>
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<tr>
<td><strong>Background:</strong> The NWPTB identified the potential for connecting Pilanesberg and Madikwe along a conservation corridor called the Heritage Park</td>
<td>The HP area has different types of stake holders (government, communities, private sector, business) and different types of land owners (private, state, communal) carrying out different types of land use (agriculture, mining, game farming, tourism, human settlements, etc). This can lead to conflicts and disagreements. Therefore, the HP Steering Committee serves as a forum where the best land use is jointly determined, the planning is jointly done and the implementation of projects is jointly monitored, to ensure that the best land use option is pursued for the benefit of the communities and the land owners.</td>
<td>Awareness of the best land use options have been improved amongst stake holders. A long term vision and a model for the development of the HP corridor have been established. A fair amount of land has been transformed from agriculture to nature-based tourism. The HP Steering Committee is still functioning and acting as an information sharing and coordination forum.</td>
<td>Projects of this magnitude require staying power and resources. It is important that the interest and momentum is maintained. Communication must be maintained throughout. Community expectations should be managed. Successes should be celebrated.</td>
</tr>
<tr>
<td><strong>Description:</strong> A Heritage Park (HP) Steering Committee was established on which all stake holders were provided a seat. All planning and project coordination for the Heritage Park project was done through the Heritage Park Steering Committee, which is chaired by NWPTB.</td>
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</tr>
<tr>
<td><strong>Lonmin &amp; Bapo Ba Mogale community</strong></td>
<td>Relates to claims and it relation to mining projects as well as expectations of claimant communities</td>
<td>Still early days but at least communication has commenced</td>
<td>Communication and well structured forum is critical</td>
</tr>
</tbody>
</table>
### Background & Description

**Description:** Forum was recently established to start engaging on a regular basis to resolve tension

**BaKubung ba Mmonakgotla and Wesiwe Plartinum**

**Background:** Prospecting on the community’s farm near Sun City realise mineral potential.

- Benefit of mining company occupation of land made sustainable
- Role of communities in empowering themselves
- Structure and funding of the community
- Access to major wealth but this was eroded by the financial advisers’ mismanagement of funds

**Description:** Community given 33% stake (amounting to R500 Million) in Wesizwe Platinum.

**Palling Hurst – IDC & Mining**

**Background:** The consolidation of the three PGM interests controlled and owned by Pallinghurst and the Bakgatla to develop a large, shallow, low-cost mining complex with a life of over 30 years known as NewCo of which the tribe is a 27% shareholder.

- The potential to create 9,000 direct and permanent jobs.
- First step to developing downstream beneficiation of PGMs.
- Bakgatla ba Kgafela Traditional Community part of a regional PGM mining leader which will create wealth and developments for the community.
- Still to be realised but likely to be:
  - Land and resources agreed within a partnership
  - Control over community development resting with tribe
  - Commercialisation of the agreement provides resources in a sustainable manner

**Description:** NewCo and IDC have entered into a binding equity subscription agreement for an investment of R3.24 billion. NewCo has a shareholding of 16.2%.

**Contents Relevant to Study**

- Benefit of mining company occupation of land made sustainable
- Role of communities in empowering themselves
- Structure and funding of the community
- Access to major wealth but this was eroded by the financial advisers’ mismanagement of funds

**Lessons Learnt**

- Internal tribal conflict and mismanaged finances a resulted in benefit not being realised.

- Commercial agreements are sustainable sources of funding and support even though they are affected by market forces.

- Wide ranging benefits can be realised with good investment and technical partnerships (beneficiation).
### Anglo Platinum and Bahalane Ba Mantserre Community

**Background:** The Baphalane ba-Mantserre lodged objection to the company's application for mining rights based on the lack of participation and benefit to the community.

**Description:** Anglo Platinum funded the community to independently develop a development plan in line with a fundamental benefit-sharing agreement between the parties.

<table>
<thead>
<tr>
<th><strong>Contents Relevant to Study</strong></th>
<th><strong>Successes</strong></th>
<th><strong>Lessons Learnt</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefit of mining company occupation of land made sustainable</td>
<td>Longer term proactive, strategic approach with priorities identified by the community trust</td>
<td>Creation of a self-sufficient, long term community controlled development plan</td>
</tr>
<tr>
<td>Role of communities in empowering themselves</td>
<td>Development of a 20 year community competitiveness plan controlled by the community.</td>
<td>Increased the profile and confidence of the tribe in dealing with the mining company.</td>
</tr>
<tr>
<td>Structure and funding of the partnership</td>
<td>Mutually beneficial relationship developed with community interacting with the mining company at the level of other stakeholders.</td>
<td>Provided monitoring of performance indicators, that relate to the success of the development rather than the amount spent.</td>
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</tbody>
</table>

### Bakgatla ba ga kgafela and Anglo Platinum

**Background:** The tribe owned farms where Anglo Platinum had mining operations.

**Description:** The tribe negotiated a settlement on royalties for the mining operations on their farms. They also acquired a 15% equity stake in the Anglo Plat operating assets.

<table>
<thead>
<tr>
<th><strong>Contents Relevant to Study</strong></th>
<th><strong>Successes</strong></th>
<th><strong>Lessons Learnt</strong></th>
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</thead>
<tbody>
<tr>
<td>Splinter group of tribe, Sefikile, challenged the rights of the main tribe and stopped the lease agreement.</td>
<td>The tribe has finances to increase their land ownership and develop the community. This was undermined by conflict within the tribe resulting in costly court cases.</td>
<td>Internal tribal conflict and costly legal proceedings resulted in benefit not being realised.</td>
</tr>
<tr>
<td>Benefit of mining company occupation of land not realised due to conflict.</td>
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<tr>
<td>Role of communities in empowering themselves</td>
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<tr>
<td>Structure and funding of the partnership</td>
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</table>
### APPENDIX F: ISSUES AND STRATEGIES MATRIX

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<thead>
<tr>
<th>ISSUE</th>
<th>REF</th>
<th>STRATEGIES</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>Focussed and Integrated Spatial Land Use Planning</td>
</tr>
<tr>
<td><strong>HIGHLY IMPORTANT ISSUES</strong></td>
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<tr>
<td>Lack of integrated strategizing and planning to unlock full potential</td>
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<tr>
<td>Spatial planning not adequately considerate of best land use</td>
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<td>Confusion and conflict regarding rights</td>
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<td>Short Term gain vs. long term sustainability</td>
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<td>Loss of Opportunities form lengthy and delayed processes</td>
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<td>Non-fulfilment of roles and responsibilities by key role players</td>
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<tr>
<td>Enforcement of legislation</td>
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<td>Overriding decision making power</td>
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<tr>
<td><strong>IMPORTANT ISSUES</strong></td>
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<tr>
<td>Inadequate capacities, awareness and understanding</td>
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<td>Lack of institutional frameworks to drive focussed development objectives</td>
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<td>National legislation forces unfunded mandates down to local levels</td>
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<td>Insufficient monitoring and control mechanisms</td>
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